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12-203

SUPREME COURT OF THE UNITED STATES.

No. ~~1,156.~~ 767

THE STATE OF LOUISIANA EX REL. MORRIS RANGER,
Plaintiff in Error,

vs.

THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

FILED MARCH 29, 1880.

INDEX.

	Original.	Print.
Petition for mandamus	2	1
Affidavit of D. C. Labatt	6	3
Order for writs of mandamus	7	3
Writ of mandamus	7	3
Sheriff's return	9	4
Peremptory exception	10	4
Case submitted	10	5
Judgment	11	5
Motion & order for suspensive appeal	12	5
Bond of appeal	13	6
Statement of facts	15	7
Certificate of clerk	17	7
Order to place case on summary docket	18	8
Cause submitted	18	8
Opinion and decree of the court	19	9
Decree	24	11
Petition of relator for a rehearing	25	11
Order granting rehearing	45	22
Opinion and decree of the court	45	22
Decree	46	23
Petition for writ of error	46	23
Order	49	24
Bond	50	24
Copy of writ of error	52	25
Clerk's certificate	54	26
Judge's certificate	55	27
Original petition for writ of error	57	27
" writ of error	60	28
" citation	62	30

1 No. 7,566.

Supreme Court La.
Filed October 13th, 1879.
(Signed)
FRANK WALL,
D'y Clerk.

State of Louisiana.

Third District Court for the Parish of Orleans.

Hon. F. A. MONROE, *Judge.*

No. 25,824.

STATE OF LA., *Ex Rel.*,
Morris Ranger,
vs.
MAYOR & ADMINISTRATORS
of the City of New Orleans.

Messrs. D. C. & L. L. LABATT,
Att'ys for Relator & Appellee.
E. HOWARD McCALEB, Esq., *City Attorney*,
&
E. H. FARRAR, Esq.,
Att'ys for Respondents & Appellants.

Returnable to the Hon. Supreme Court of La., on the 1st Monday in November, 1879.

2 *Petition for Mandamus.*

Filed June 2nd, 1879.

To the Honorable F. A. Monroe, Judge of the Third District Court for the Parish of Orleans.

The petition of the State of Louisiana on the relation of Morris Ranger of Liverpool, England, an alien and subject of the Queen of Great Britian and Ireland and Empress of India, respectfully shows that your Relator has heretofore recovered judgment in this Honorable Court in suits Nos. 25,993 & 25,994, late Superior District Court, duly transferred to this Honorable Court of its docket, against the City of New Orleans, a body corporate under the laws of Louisiana, domiciled in this parish on certain bonds executed and issued by said City under the provisions of acts No. 108 and 109 of Legislature of the State of Louisiana of the 15th March, 1854, and amounting in the aggregate to the sum of one hundred and seventy thousand dollars, with 6% interest thereon from the first of May, 1874, until paid,
3 with five hundred and twelve $\frac{15}{100}$ ($512.15) dollars costs therein.

And your petition shows that under said judgments, he has

caused writs of fieri facias to issue against said City, and that the same have been returned *nulla bona* after due demand upon the officers of said city to point out property to be levied upon under said writs to satisfy the same, and that there is no property out of which said judgment can be made, belonging to said defendant that is subject to seizure under executions, and that Relator cannot make his money, except through the Writ of Mandamus, to be issued to the proper authorities of said City by this Honorable Court, and that he is without other remedy. Your Relator respectfully represents that it is the duty of the said City of New Orleans, imposed by law, and the obligations of the bonds, merged in said judgments, to pay said judgments, and to do which they are bound to levy sufficient taxes to satisfy and extinguish the same, but that said City have neglected
4 and refused to do so. Petitioner alleges that said City should be compelled by writ of mandamus to levy, collect, set apart, and pay over to your petitioner, within a reasonable delay to be limited by the Court, a sufficient tax to pay said judgments, interest and costs, as appear to have been rendered upon bonds of said city issued under the provisions of said acts of the Legislature of Louisiana, Nos. 108 and 109, of the session of 1854. Petitioner further alleges that his rights are fully protected by the Constitution of the United States, Article 1st, Section 10, and the Constitution of the State of Louisiana, as to the obligation of Defendant's contract, and that no subsequent law or decision can impair the same. That the Mayor and administrators who represent and exercise the corporate powers of the said City of New Orleans, refuse and neglect to pay said judgments out of any funds in their possession, or under their control, or to levy and collect any tax to pay said judgments of Relator, and put him at defiance, and that he is entirely without remedy
5 to collect said judgments by ordinary levy of executing upon the property of said corporation. That the Mayor of the City is Isaac W. Patton, and the administrators are John Glynn, Jr., administrator of accounts, Alfred H. Isaacson, administrator of finance, E. R. Chevally, administrator of Water Works and Public Buildings, D. Meallie, administrator of Police, J. Henry Behan, administrator of Commerce, Washington Marks, administrator of Assessments, and James D. Houston, administrator of improvements; who are now in possession of their offices and in full experience of all the powers thereof, and upon whom the law imposes the duty and obligations to levy and collect said tax, so far as said judgments are concerned, and as before set forth.

Wherefore petitioner prays that the premises and accompanying affidavit being considered, your Honor will order the Mayor and administrators of said City to show cause, on a day to be assigned
6 by the court, why a peremptory writ of mandamus should not issue herein commanding them, within a reasonable delay, to be determined by the court, to proceed to levy and collect, set apart and pay over to your petitioner, a tax, sufficient to extinguish and

satisfy said judgments, interests and costs, in favor of your Relator, as appears on the face of the records to have been rendered upon the bonds of said City issued under the provisions of Acts No. 108 and 109 of 1854, and all costs and interests until paid, and that said taxes when paid be kept separate and apart and paid to your Relator in satisfaction of said judgments and Relator prays for costs and for general relief.

(Signed) D. C. & L. L. LABATT,
of Counsel.

Affidavit of D. C. Labatt.

Filed 2nd June, 1879.

Personally apeared David C. Labatt of the City of New Orleans, who being duly sworn, says that he is the attorney at law and agent of Morris Ranger, the Relator, who is absent, and that the facts
7 and allegations of the foregoing petition are true and correct to the best of his knowledge and belief.

(Signed) D. C. LABATT.

Sworn to and subscribed before me this day, New Orleans, June 2nd, 1879.

(Signed) N. B. TRIST,
[SEAL.] *Notary Public.*

Order for Writs of Mandamus.

Let the Writs of Mandamus, herein prayed for, issue according to law, commanding the defendant to comply with the demand of the within petition, or show cause to the contrary on Monday, the 9th day of June, 1879, at eleven o'clock, A. M.

New Orleans, June 2nd, 1879.

(Signed) F. A. MONROE,
Judge.

Writ of Mandamus issued to the Mayor and Administrators of the City of New Orleans

Issued June 3rd, 1879.

State of Louisiana.

Third District Court for the Parish of Orleans.

8 The State of Louisiana.

STATE *Ex rel.*, MORRIS RANGER
vs.
MAYOR & ADMINISTRATORS OF the City of New Orleans. } No. 25,824.

To I. W. Patton, Mayor of the City of New Orleans, A. H. Isaac-

son, Administrator of Finance, John Glynn, Jr., Administrator of Accounts, Washington Marks, Administrator of Assessments, J. D. Houston, Administrator of Improvements, Patrick Meallie, Administrator of Police, J. Henry Behan, Administrator of Commerce, and E. R. Chevalley, Administrator of Water Works and Public Buildings, Greeting: You are hereby commanded in the name of the State of Louisiana and of the Third District Court for the Parish of Orleans to comply with the demand of the petition, a duly certified copy whereof, accompanies this writ, or show cause to the contrary on Monday, the 9th day of June, 1879, at eleven o'clock, A. M.

Witness, the Honorable F. A. Monroe, Judge of our said court
9 this third day of June, in the year of our Lord one thousand eight hundred and seventy-nine and in the one hundred and third year of the Independence of the United States.

(Signed) P. J. SULLIVAN,
[SEAL.] *Deputy Clerk.*

Sheriff's Return on Writ of Mandamus to the Mayor and Administrators of the City of New Orleans.

Filed June 5th, 1879.

Received June 4th, 1879, and on the 5th day of June, 1879, I served a copy of the within writ of Mandamus and copy of accompanying petition personally on I. W. Patton, Mayor of the City of New Orleans, and personally on A. H. Isaacson, Administrator of Finance, and personally on John Glynn, Jr., Administrator of Accounts, and personally on J. Henry Behan, Administrator of Commerce, and personally on Patrick Meallie, Administrator of Police, and personally on E. R. Chevalley, Administrator of Water Works and Public Buildings, and personally on Wash. Marks, Administrator of
10 Assessment, and on J. D. Houston, Administrator of Improvements through James Pollock his chief clerk in person.

Returned same day.

(Signed) T. J. NAVEN,
Deputy Sheriff.

Peremptory exception of the City of New Orleans and defendants.
Filed June 9th, 1879.

STATE, *Ex Rel.*, MORRIS RANGER, *vs.* MAYOR AND ADMINISTRATORS OF the City of New Orleans. } No. 25,824. 3rd Dist. Court for the Parish of Orleans.

And now comes the defendants, and, for peremptory exception to Relator's demand, say that he is not entitled to the relief in the form and manner prayed for by him.

Wherefore they pray that Relator's demand be rejected with costs.

(Signed) E. Howard McCaleb, *City Att'y*,
(Signed) E. H. Farrar, *of Counsel.*

Case submitted.

Extract from minutes.
9th day of June, 1879.

STATE, *Ex Rel.*, MORRIS RANGER,
vs.
MAYOR & ADMINISTRATORS OF THE City of New Orleans.
No. 25,824.
3rd Dist. Court for the Parish of Orleans.

11 This case came on this day.
Present; D. C. & L. L. Labatt, for Plaintiff,
E. H. Farrar, for Defendants.

After hearing pleadings, evidence, and counsel, the Court took time to consider *judgment.*

STATE *Ex Rel.* MORRIS RANGER
vs.
MAYOR & ADMINISTRATORS OF the City of New Orleans.
No. 25,824
3rd Dist. Court for the Parish of Orleans.

For the reasons this day orally assigned by the Court, the law and the evidence being in favor of the Relator.

It is ordered, adjudged, and decreed that the alternative writ of mandamus herein issued be made peremptory, and, accordingly, that the Mayor and Administrators of the City of New Orleans be directed to levy within a reasonable time, not later than the month of December, 1879, and thereafter, concurrently with the collection of other taxes levied during the present year, to collect, set apart, and pay over to the Relator herein a tax sufficient to pay and satisfy the judgments described in the petition herein filed, with interest and costs, as therein set forth.

12 It is further ordered that the respondents pay the costs of this proceeding.

Judgment rendered June 13th, 1879, and signed June 18th, 1879.

(Signed) F. A. Monroe,
Judge.

Motion and order for suspensive appeal.

Extract from minutes, & filed June 19th, '79.

STATE *Ex Rel.* MORRIS RANGER
vs.
MAYOR & ADMINISTRATORS OF the City of New Orleans.
No. 25,824.
3rd Dist. Court for the Parish of Orleans.

On motion of E. Howard McCaleb, city attorney, and of E. H. Farrar, counsel, and on suggestion to the Court that there is error to the prejudice of defendants, and of the City of New Orleans, in the judgment herein rendered on the 13th day of June and signed on the 18th

day of June, 1879, ordering the issuance of peremptory writs of mandamus to levy and collect the special tax to pay Relator's judgments, and that they are aggrieved thereby, and on further suggesting that the City of New Orleans is dispensed by law from giving bond.

13 It is ordered by the court that defendants and the City of New Orleans be allowed a suspensive appeal from said judgment, returnable to the Supreme Court of Louisiana, on the 1st Monday in November—the City of New Orleans without giving bond, and the defendants Isaac W. Patton, Mayor, John Glynn, Jr., Administrator of Accounts, A. H. Isaacson, Administrator of Finance, J. H. Behan, Aministrator of Commerce, Wash. Marks, Administrator of Assessments, E. R. Chevalley, Administrator of Water Works and Public Buildings, P. Meallie, Administrator of Police, and J. D. Houston, Administrator of Improvements on their giving a bond conditioned according to law in the sum of Two Hundred and Fifty dollars.

Appeal Bond.

Filed June 19th, 1879.

STATE *Ex Rel.* MORRIS RANGER *vs.* MAYOR & ADMINISTRATORS OF THE City of New Orleans.	No. 25,824. 3rd Dist. Court for the Parish of Orleans.

Know all men by these presents that we, Isaac W. Patton, Mayor of the City of New Orleans, John Glynn Jr., Administrator of Accounts, A. H. Isaacson, Administrator of Finance, J. H.

14 Behan, Administrator of Commerce, Wash. Marks, Administrator of Assessments, E. R. Chevalley, Administrator of Water Works and Public Buildings, J. D. Houston, Administrator of Improvements, and P. Meallie, Administrator of Police, as principals, and Edgar Howard Farrar, as surety, are held and firmly bound unto Benjamin Armbruster, Clerk of the Third District Court for the Parish of Orleans, his successors, executors, administrtors and assigns, in the sum of two hundred and fifty dollars, for the payment whereof, we bind ourselves, our heirs, executors, and administrators firmly by these presents, sealed with our seals, and dated in the City of New Orleans, on this 19th day of June, in the year of our Lord one thousand eight hundred and seventy-nine.

Whereas, the above bounded Patton, Glynn, Isaacson, Behan, Marks, Chevalley, Houston and Meallie this day filed a motion of appeal from a final judgment rendered against them as Mayor and Administrators of the City of New Orleans in the matter of "State *Ex Rel.* Morris Ranger *vs.* Mayor & Administrators of the City of New Orleans No. 25,824, in the Third District Court for the Parish

15 of Orleans, on the 13th day of June, 1879, and signed on the 18th day of June, 1879.

Now, the condition of the above obligation is such, that the above bound Patton, Glynn, Isaacson, Behan, Marks, Chevalley, Houston, and Meallie shall prosecute their appeal and shall satisfy whatever judgment may be rendered against them, or that the same shall be satisfied by the proceeds of the sale of their estate, real or personal, if they be cast in the appeal; otherwise, that the said E. H. Farrar, shall be liable in their place.

"Signed." ISAAC W. PATTON, Mayor.
" JOHN GLYNN, Jr., Admr. of Accounts.
" A. H. ISAACSON, " " Finance.
" I. H. BEHAN, " " Commerce.
" E. R. CHEVALLEY, Admr. of Water Works and Public Buildings.
" J. D. HOUSTON, Admr. of Improvements.
" P. MEALLIE, " " Police.

By E. HOWARD McCALEB, City Atty. [L. S.]
(Signed.) EDGAR HOWARD FARRAR. [L. S.]

Statement of Facts.

Filed October 10th, 1879.

STATE OF LA. *Ex Rel.* MORRIS RANGER
vs.
16 MAYOR & ADMINISTRATORS OF THE City of New Orleans.
} No. 25,824. 3d Dist. Court for the Parish of Orleans.

The following statement of facts is agreed upon in the above cause.

1st. That the judgments which are made the basis of this Mandamus proceeding were rendered for the amounts, principal, interest, and costs and at the dates stated in the petition, and had for their basis bonds issued by the City of New Orleans in 1854, to the New Orleans, Jackson and Great Northern Rail Road Company and New Orleans, Opelousas and Great Western Rail Road Company.

2nd. That Writs of *fieri facias* were issued on said judgments, and after our demand made upon the city were returned Nulla Bona, and that the city has no property liable to seizure and sale.

3rd. That said judgments have never been registered in accordance with the provisions of the act of 1870.

It is further agreed that this statement of the facts is made in lieu of the note of evidence taken at the trial which has been mislaid.

New Orleans, October 9th, 1879.

(Signed) D. C. LABATT, *Attorney for Relator.*
(Signed) E. H. FARRAR, *Attorney for Defendants.*

Certificate of Clerk.

17 State of Louisiana.

Third District Court for the Parish of Orleans.

I, Benjamin Armbruster, Clerk of the Third District Court for the

Parish of Orleans do hereby certify that the foregoing eighteen (18) pages do contain a complete, true and correct transcript of all the proceedings had, evidence adduced and documents filed, the whole as per statement of facts made part hereof, and copied on pages 17 and 18 of this transcript, in the suit entitled: "State of Louisiana Ex Rel., Morris Ranger vs. Mayor and Administrators of the City of New Orleans, No. 25,824 of the Docket of said Court. In testimony whereof, I hereunto set my hand and affix the seal of the said Court at the City of New Orleans on this eleventh day of October in the year of our Lord, one thousand eight hundred and seventy-nine, and in the 104th year of the Independence of the United States of America.

(Signed) BEN. ARMBRUSTER,
[SEAL.] *Clerk.*

United States of America.
State of Louisiana.

18 Supreme Court of the State of Louisiana.

Order to place case on Summary Docket.

Filed October 16th, 1879.

STATE OF LA. EX REL., M. RANGER
vs.
MAYOR CITY OF NEW ORLEANS ET AL. } No. 7566.

To the Clerk S. C.

Please place above record on the Summary Docket to be called and fixed.

(Signed) D. C. LABATT,
N. O. Oct. 16th, 1879. *Atty.*

Cause submitted.

Extract from the minutes Wednesday, November 19th, 1879.

The court was duly opened, present their Honors:

Thomas C. Manning, Chief Justice, and Robert H. Marr, Alcibiade DeBlanc, William B. Spencer, Edward D. White, Associate Justices.

STATE OF LA. EX REL., MORRIS RANGER
vs.
MAYOR & ADMINISTRATORS OF THE
City of New Orleans. } No. 7566.

19 This case was called for trial, and having heard argument from David C. Labatt, Esq., of counsel for plaintiff and appellee, and from E. Howard McCaleb, Esq., City Attorney, on behalf of the defendants, appellants herein.

The court took said case under advisement upon the briefs now on file for parties in interest.

Opinion and Decree of the Court.

Filed December 1st, 1879.

STATE EX REL. MORRIS RANGER
vs.
CITY OF NEW ORLEANS
BY MR. JUSTICE SPENCER.

No. 7566.

Relator having obtained judgments against the City of New Orleans, and issued *fi. fas.* thereon, which were returned *Nulla bona*, took the present proceeding to obtain a peremptory Mandamus to compel the City authorities to levy and collect a special tax to pay his said judgments.

The City resists this demand on the ground that relator has not registered his judgments as required by act No. 5 of the Extra
20 Session of 1870. Plaintiff's judgments are based upon bonds of the City issued in 1854 in aid of certain Railroads—Relator contends that the provisions of said act No. 5, of 1870, are inoperative and void, as to him, since the effect thereof is to impair the obligation of the contract made with him in 1854—The principles of law involved are now well established. The difficulty is in their application to the facts of each case.

It is the privilege of individuals to make contracts—But to provide the machinery for, & the modes & manners of, enforcing the contracts so made belong exclusively to the government. The obligations resulting from lawful contracts, are not only binding on the parties, but the State itself cannot directly or indirectly impair them or lessen their value.

But the control of the State over the manner of executing obligations is absolute, *provided only* that in changing remedies or modes of execution the right secured by the obligation be not impaired or lessened in value.

21 What were plaintiffs rights and remedies under the laws in force in 1854? Does the act No. 5, of 1870, *as, & to the extent, it is now invoked* by the city, impair or lessen the value of plaintiffs claim against the city?

We understand that the sole ground upon which the city resists the relator's demands is, that it (the city) is under no obligation to levy a tax to pay relator, until he has caused his judgment to be registered as required by act 5 aforesaid.

The only question therefore now before us is, does that act, *in so far as it requires registry*, as a pre-requiste to payment, or the levy of a tax, impair the obligation of the relator's bonds issued in 1854? The act under which these bonds were issued, made *no provision for a special tax* to pay them? So that in that regard relator occupied the relation of an ordinary creditor. The city by the laws in force in 1854 was under no obligation to levy a special tax for these

bonds—Their payment was to be effected like all other unsecured debts of the city—by fieri facias if property could be found
22 or by being carried into the annual budget, and a tax levied to pay them, in the ordinary and customary administration of the city's affairs. If the city failed to do this the creditor could compel performance by mandamus.

It may be that the act, No. 5, of 1870, contains provisions which, if *invoked*, would necessitate our declaring them unconstitutional. But sufficient unto the day is the evil thereof. We are now only called upon to pass upon the constitutionality of that section requiring registry. If we find that to be invalid as impairing the obligation of a contract, we will then have to decide other & ulterior questions; but if we find it to be a mere change of remedy not impairing the value of pl'ff's right, then we may halt and require the relator to comply with it before seeking ulterior relief. For aught that we know, for aught that appears by the record, the city will pay relator's claim immediately upon its registry. Act 5 directs it so to do if there are funds, as to which we are not advised. If there are no funds, the act requires the judgment to be put upon the next
23 budget, & a tax sufficient to pay it to be levied. We cannot presume that the city will fail in its duty in this regard. On the contrary, we must presume that upon relator registering his judgment, the city will at once pay it, or provide for its payment by levying a tax in due course of administration. Nor can we presume that the city will levy an insufficient tax, or hold itself bound, in regard to relator's debt, by the limitations imposed on its taxing power by the premium bond act of 1876, if that limitation is unconstitutional.

The requirement of the registry of all judgments before payment, or before levying taxes to pay them, seems to us to be a wise and useful provision of law, tending to restrain & check the reckless levy of taxes, and to afford, in compact form, a correct knowledge of the city's liabilities. The formality is neither onerous nor expensive to the judgment creditor, and in no wise delays or retards the progress of his measures to secure payment. As far as we can see, it
*24 takes away from him no pre-existing right; nor does it render less effective any pre-existing remedies. In a word, it does not appreciably lessen the value of his right or impair its obligation. The requirement is one made in the interest of economy and the orderly conduct of the city's affairs. We apprehend that no court would grant relator's prayer & order a special tax, if the city tendered payment upon the condition that relator first register his judgment. It would, in such case, certainly be held to be a regulation which did not operate any impairment of plaintiff's rights. We think the relator is premature in his action. He should first register his judgments, and then, if payment is not made or adequately provided for in the next tax levy, proceed to compel it.

It is, therefore, ordered and decreed that the judgment appealed

from be reversed, and it is now ordered and decreed that relator's suit be dismissed at his costs.

Decree.

25 Extract from the minutes, Monday, December 1st, 1879.

The Court was duly opened pursuant to adjournment; present, their honors:

Thomas C. Manning, Chief-Justice, and Robert H. Marr, Alcebiade DeBlanc, William B. Spencer, Edward D. White, Associate Justices.

STATE EX REL. MORRIS RANGER
vs.
CITY OF NEW ORLEANS. } No. 7566.

On appeal from the Third District Court for the parish of Orleans. It is ordered and decreed that the judgment appealed from be reversed, and it is now ordered and decreed that relator's suit be dismissed at his costs.

Petition of relator for a rehearing.

Filed Dec'r 8th, 1879.

[Title.]

In the Supreme Court of Louisiana.

THE STATE OF LOUISIANA EX REL.
Morris Ranger
versus
CITY OF NEW ORLEANS. } No.———

Petition of Relator for a Rehearing.

D. C. LABATT.

Supreme Court of La.
Filed Dec. 8, 1879.

FRANK WALL,
D'y Clerk.

26 In the Supreme Court of Louisiana.

THE STATE OF LOUISIANA EX REL.
Morris Ranger
versus
CITY OF NEW ORLEANS. } No.———

Petition of Relator for a Rehearing.

The relator with due respect asks for a rehearing on the following grounds:

1st. Because your Honors err in determining his rights that he asks for a "special tax" to pay his judgments. The petition discloses no such demand or prayer; on the contrary, he asks that the de-

fendant be ordered to levy a "*tax sufficient*" to pay absolute and unqualified judgments precisely as the same defendant, in a simi-
27 lar case, upon the same kind of bonds, has been ordered to do by the Supreme Court of the United States, in 8 Otto, and which is being now enforced by final writs of mandamus from the Circuit Court of the United States in this district. Relator asks for no "special tax," as the decree assumes, with due respect to the court.

2d. The court, relator believes, also errs in determining that the act No. 5 of 1870, does not violate the obligation of his contract as guaranteed by the constitution of the United States, and that he is bound by any of its provisions in the enforcement of his claims to a mandamus as prayed for.

Upon the first point: Your Honors say "the present proceedings to obtain a peremptory mandamus to compel the city authorities *to levy and collect a 'special tax' to pay his said judgments;*" relator answers that no such claim or demand is found in his pleadings, allegations, briefs or prayer, and that he studiously avoids asking for more than he was legally entitled to, under the authority in Ranger vs. New Orleans, in 8 Otto. The case was expressly decided in plaintiff's favor, on the ground stated by your Honors, "that the act under which the bonds were issued made no provision for a *special tax* to pay them, so that, in that regard, relator occupied the relation of an ordinary creditor." It was precisely because relator was an ordinary judgment creditor, without restriction or limitation in 1854, with executions returned *nulla bona*, that he was decided in that case to be entitled to a similar mandamus to levy a tax sufficient to pay them as a duty imposed by law at that time, and which could not be affected by subsequent legislation, not even the "premium bond
28 law" which sought to limit taxation to pay the bonds in so many words. Your Honors further say: "The city in 1854 was under no obligation to levy a 'special tax' for these bonds," but your Honors admit he was "entitled to his *fi. fa.*, or being carried in the annual budget, and a tax levied to pay them in the ordinary and customary administration of the city's affairs." Relator answers the first proposition by reiterating that he never pretended in his pleadings or argument that any *special tax* was provided in the statutes creating the bonds for payment of the capital due him, but that his right to a mandamus did not rest on that fact or omission, but on other provisions of the charter which bound the city to provide for the payment of these judgments, unaffected by any subsequent legislation or limitation, and this point was directly and emphatically decided by the highest authority in the land, and that the decision of that august tribunal was entitled to respect here. In view of its appellate power to enforce that determination, relator considered the question as to his rights irrevocably and fully adjudicated in that decision, and relied upon this honorable court to adopt the conclusions of the United States Supreme Court on the identical questions here involved, even though that decision did not meet complete approval.

On the second proposition your Honors admit that "relator was entitled to a *fi. fa.*. or being carried into the annual budget, and a tax levied to pay them, etc." This is all relator seeks, and precisely what is demanded by the present proceedings, but which your Honors say have been "constitutionally changed by the act of 1870, requiring registry, etc.," in lieu thereof. Now no registry of our judgments was exacted by previous legislation as preliminary to a man-
29 damus to obtain what your Honors say relator was entitled to, and no formality was required anterior to the act of 1870; therefore, we say that act which attempts to change and impose new conditions and new and other proceedings under our judgments, affects the remedy existing at the time and is a *nullity* as to relator, whose rights could not be affected or impaired by any such requirements. Numerous authorities cited settle, that such legislation impairs the obligation of the contract and is a nullity. They change his remedy, postpone pay-day and impair his contract by interminable delays. They transform his absolute judgments into mere certificates of registry. If your Honors would read the case in 8 Otto, at page 390, you will find the following points made and decided between the same parties upon the identical issues:

1st. "Whenever a municipality is expressly authorized to levy a tax for the payment of its obligations, it will by *mandamus* be compelled to do so, to satisfy judgment recovered upon them where an execution has been returned unsatisfied." 24 How., 376; 4 Wall., 535; 7 id, 313, 175; 9 id, 415; 95 U. S., 360.

2d. "If the statute authorizing or creating debts does not provide the means of paying them, the power to tax in order to raise the means of paying them will be held to be *ipso facto* conferred, unless there is an express limitation to that power which forbids such inference." 20 Wall., 655; 111 Mass., 460; 37 Pa., 277, and numerous authorities same affect (p. 390, 8 Otto).

Your Honors will not overlook the fact that no registry was required in 1854, and no limitation of taxes existed to affect or qualify relator's right to a *mandamus*. To this the city urged:

30 1st. "If no tax has been provided for the payment of the bonds on which the judgments in this case were recovered, the *mandamus* would be an assumption of legislative power, and the application for the writ must fail."

2d. "The relator maintains the doctrine that the power to tax is implied from the power to contract, and that wherever a judgment against a municipal corporation is unpaid, the exercise of the taxing power can be coerced by suit."

3d. "*The act of March 6, 1876, prohibits the city from levying any tax for bonds or the interest on them, except that thereby authorized and excludes the relator's bonds.*

"This legislation gave him no right to the tax he asks. The principal of his bonds has been provided for in the act of 1854. The *power of the Legislature* to modify, change and repeal taxation is un-

restricted, provided the taxes in existence when the debt is created are preserved to the creditor."

These were the points on which the Ranger case was tried, and although the city relied on the validity of the "premium bond act," and not upon the "act of 1870," relator submits that the decision applies equally to one law as to the other, both being ineffectual to touch a fibre of our contract or the means of enforcement existing at the time of its origin, and which became part and parcel thereof. How did that great tribunal deal with the difficulty? They said: "When authority to borrow money or incur an obligation in order to execute a public work is conferred upon a municipal corporation, the power to levy a tax for its payment or the discharge of its obligation accompanies it, and *this too without any special mention that such* power is granted. This arises from the fact that such corporations seldom possess, so seldom indeed, as to be exceptional, any means
31 to discharge their pecuniary obligations *except by taxation.*"

We have said that "the authority to create the debt implies an obligation to pay it, and when no special mode of doing so is provided, it is also implied that it is to be done in the ordinary way, by the levy and collection of taxes." Now, at the time of relator's contract there was no other mode of paying him but the duty to levy taxes to pay his judgments, and the office and mission of the writ of mandamus is merely to enforce the performance of this neglected and refused duty.

Again, the United State Supreme Court say: "*The indebtedness is absolute.*" If there were any question originally as to a limitation of the means by which the bonds were to be paid, it is cut off from consideration now by the judgments. If a limitation existed, it should have been insisted upon when the suits on the bonds were pending *and continued in the judgments.*" If relator were bound by the act of 1870 to register his judgment and await the tardy process of the provision contemplated by the labyrinthian act of 1870, why was it not pleaded and "*continued in the judgment?*" and if it had been so incorporated, relator's assault on that act would not have been deemed premature as your Honors held in rendering an unqualified judgment in his favor on these bonds. But the court say further: "If the question were an open one, our conclusion would be the same."

"There is nothing, therefore, in the position of counsel to impair the validity of the bonds upon which the judgments were recovered if we were at liberty to consider them on this application. But as already said, the judgments are conclusive upon this point. Owing the debt, the city has the power to levy a tax for its pay-
32 ment. By its charter, in force when the bonds were issued, it was invested in express terms with all the powers, rights, privileges and immunities incident to a municipal corporation and necessary for the proper government of the same. Remember, may it please your Honors, that the position of counsel referred to was

that the "premium bond act of 1876 was valid legislation to affect our contract of 1854." Apply this view to the act of 1870, which embodies the "premium bond act," and your Honor's will not fail to see the error into which you have fallen in regard to a statute less formidable than the act of 1876. So the court adds: "Having the power to levy a tax for the payment of the judgments of relator, it was the duty of the city, through its authorities, to exercise the power. The payment was not a matter resting in its pleasure, but a duty which it owed the creditor. Having neglected this duty the case was one in which a *mandamus* should have been issued to enforce its performance." 24 How., 376; 4 Wall., 535, and other authorities. The learned counsel for the city in that case never pretended to rely on the act of 1870 in that court, but they did upon similar legislation, and it resulted in according to relator, the precise writ which your Honors now deny. The sole purpose and object of the act of 1870 is to clog, hinder and prevent relator from exercising his legal rights as settled by this decision on the same bonds and similar absolute judgments, and to make payment to him a "matter to rest in the pleasure of the administrators, what the law made a duty which it owed to the creditor." It is apparent, notorious, and glaring that since the maturity of these bonds in 1874,

33 nearly six years ago, the defendant has neglected this duty, and that it never would be performed under the operations of this registry law, and that the writ of mandamus to enforce the performance of this duty is the only remedy contemplated by the obligation of the contract of 1854. The act of 1870 was palpably intended to nullify, change and destroy the coercive power of the courts, and vest in the hollow vote of the city administrators, dependent upon their pleasure alone, the power to decide, when they would perform these solemn duties, and no law having such purpose ought to be approved by this honorable court as not stricken with nullity by the organic law of the land, both Federal and State, to say nothing of cases cited, directly in point on precisely similar statutes. Your Honors says: "The government can change the remedies of contracts between individuals, provided they do not impair the obligation." But it is clear that the act of 1870 is obnoxious to this very test. It reduces an unqualified judgment with certain legal rights to one of a mere certificate of registry, with a moral obligation only to levy a tax in the course of years by a budget which does not yield enough to keep down the interest on the already registered judgments. This fact is know of all men, and registered judgments, in consequence, are worth in the market hardly twenty cents on the dollar. This act is practically a permanent postponement of pay day, and is just such a statute as Judge Martin said was unconstitutional, when he said, "*minus solvit, qui serius solvit.*" "He pays *less* who pays *later*." In conclusion, we refer your Honors to another case in point—2 Bissell, page 408—Judge Blodgett said: "The bonds for which this judgment was rendered had been legally issued, and the

city authorities and voters where all chargeable with notice
34 that they were due and ought to be paid. They should then have levied and collected an adequate tax in apt time to have the money ready when their obligation matured, and having failed to do so, *are guilty of a breach of duty which the writ of mandamus will compel them to perform.* The aspect of the case is this. The respondent owes the debt and acknowledges their legal and moral obligation to pay it, but have failed to take the necessary steps to raise the funds wherewith to do so. They have the power to levy and collect an adequate tax and their duty is coextensive with that power," and he ordered a mandamus in a case almost identical. See also 5 Wall., 705; 1 Dillon, 522; 2 Biss., 77; 24 Mich., 458; 60 Maine, 127; 21 Penn., 147. 167; 7 Wall., 708; High on Ex. Rem., Sec. 397.

When it is recalled that in the 8th Otto it is admitted by the city that she sold 80,000 shares of this railroad stock pledged to pay these bonds, and received on the twentieth of June, 1870, three hundred and twenty thousand dollars, and has never paid a single one of the bonds issued therefor, all sympathy of the judges should disappear and make them swift to extend justice to a distant stranger who trusted her honor in the days of her prosperity. The Supreme Court of the United States refers to it as an evidence of her insensibility to the obligations she incurred. Relator is convinced that it was this insensibility, more than the solid welfare of its inhabitants, that conceived the monstrous statute invoked against him; but if it were otherwise, he believes this honorable court will fearlessly act on the principles beautifully expressed by a great jurist of New England. "If," said he, "on the one side is the executive power,
and the legislature and the people—the sources of his honors,
35 the givers of his daily dread—and on the other an individual nameless and odious, his eye is to see neither great nor small, attending only to the 'trepidations of the balance.' If a law is passed by a unanimous legislature, clamored for by the general voice of the public, and a cause is before him on it in which the whole community is on one side and an individual, nameless and odious, on the other, and he believes it to be against the constitution, he must so declare it, *or there is no judge.* If Athens come there to demand that the cup of hemlock be put to the lips of the wisest of men, and he believes that he has not *corrupted the youth nor omitted to worship the gods of the city, nor introduced new divinities of his own,* he must deliver him, though the thunder light on his unterrified brow." Judge Martin urged the same doctrine in the case in 3 M. O. S., when he said, "*Fiat justitia, ruat cœlum.*" The law of relator's case has been solemnly declared by the Supreme Court of the United States irrevocably, and he submits that your Honors should not establish a different mode of enforcing his adjudicated rights upon similar judgments, even though that decision were open to fair criticism by your Honors. He has claimed the protection of the Fed-

eral Constitution and the decisions of its highest court, so as to preserve his contract from the *slightest impairment or change*, and your Honors have determined his rights by reference to a statute which sweeps from under him the labor of years, a fortune of no small magnitude, and leaves him with a "barren sceptre in his hands."

His Honor Judge Woods, in the recent Atlanta case, held that a judgment creditor of the city who had registered under the act of 1870 was not precluded from the other means of enforcing his
36 judgment; that they were additional or cumulative remedies, optional and not preclusive. "He is entitled to both remedies; it does not preclude him from his right of serving a writ of *fieri facias* if his judgment has not been paid. He is not to be put to his election, nor by adopting one he is in any manner estopped from resorting to the other. Satisfaction of his judgment, either actual or constructive, can prevent his resort to the writ of execution."

Now, if it be answered that this was because the Federal court were not bound by the act of 1870, being a State law, we can reply that our contract of 1854 was quite as free from interference as the Federal courts are from State legislation, and that it is quite pertinent to show and urge that relator is not bound to accept or adopt the new remedy to satisfy his judgment, any more than a judgment creditor in the Federal court who did accept was thereby estopped. Relator could regard the act as merely optional.

Relator urged before your Honors that the act of 1870 violated also article 10 of the constitution of the State of Louisiana; "*all courts shall be open;* and every person, for injury done him in his land, goods, person or reputation, shall have adequate remedy *by due process of law and justice* administered without denial or *unreasonable delay*." Test the act of 1870 by this fundamental principle and see if it does not close the court to a litigant who obtains an absolute, unqualified judgment, so that he cannot obtain a *fi. fa.* or *mandamus* thereon against a particular defendant, viz: the city New Orleans, unless he first registers his judgment and awaits the *defendant's pleasure to pay?* Is the provision of registry in the act of 1870 "adequate remedy by due process of law and justice? Could the Legislature invest the city administrators with any remedy which
37 would partake of or be equivalent to "due process of law and justice?" Article 94 of the same constitution forbids the Legislature from depositing judicial powers on any officers of a city except such as may be necessary in towns and cities, and even then only, these powers "extend no further, than the cognizance of cases arising under police regulations." Is it not a "judicial duty" to issue a writ of *fi. fa.* or *mandamus?* How can the Legislature abridge it and lodge an adequate power equally judicial with these prohibited representatives of the defendant? It is contrary to fundamental jurisprudence to entrust the "lamb to the care of the wolf," a principle deeply embodied in the elementary strata of the civil law. This act forbids the judge to give the relator "adequate remedy by

due process of law and justice," and hermetically seals his court against relator's entrance into it, to obtain the ordinary writs to which he is entitled to "protect his goods, his person and his reputation," which are all involved in the denial of ordinary process to obtain prompt payment, in order to meet his own financial engagements. Your Honors have inadvertently overlooked this constitutional condemnation of this statute, and under article 80 of the State constitution it is respectfully suggested should "adduce the reasons" on which a judgment to the contrary is founded. Your Honors have adopted an erroneous theory in relation to the act of 1870, which cannot be supported by authority founded on a proper estimation of its details. If, as your decree says, relator is bound to register his judgments as therein provided, then you place him completely under the dominion of its other provisions, and he must abide payment under the
38 contemplated budget to be prepared in January of each year.

Now, when you consider that the budget tax is expressly limited by legislation so that for interest on premium bonds, and for expenses of administration, the tax cannot exceed one and a-half per cent on the assessed value of real estate and personal property, it becomes a mathematical problem that the act of 1870 diminishes relator's rights and transforms judgments not subject to any limitation whatever, into judgments *limited* to be paid by a tax of one and a-half per cent for all purposes in a budget that does not yield enough to pay the ordinary requirements of the city. Can an act which does this be said not to impair, lessen and postpone the obligation of relator's contract? By section 6 of the premium bond act, p. 55, acts 1876, it is provided in regard to this budget *which the act af 1870 refers to:* "It shall be the duty of the Council annually to levy an equal and uniform tax on all the assessed property within the corporate limits of the city at a rate sufficient to provide the amount included in the budget as aforesaid, and said tax, so levied, shall constitute a special fund to be used for no other purpose than the payment of said bonds and interest on the said premiums comprised in said allotments, and the funds so raised shall be placed to the credit of an account to be called the premium bond account, and no money from said fund shall be paid out, except on the joint authority of the commissioners of the consolidated debt. The said tax so to be raised shall be denominated the premium bond tax, and shall be separately mentioned in the tax rolls and receipts; provided that the taxable power of the corporation of the city of New Orleans for all purposes, including general administration, school, police, lighting, salary
39 of officers, court expenses and every other purpose of government, including the sum to be raised to pay the premium bonds as above stated, shall never, until the full, complete and final payment of the said premium bonds, exceed the rate of one and a-half per cent on the dollar of all the assessed value of property subject to taxation within the limits of the said city of New Orleans. The above limitation of the taxable power of the corporation is hereby

declared to be a contract, not only with the holder of said premium bonds, but also with all residents and tax payers of the said city, so as to authorize any holder of said premium bonds, resident or taxpayer to legally object to any rate of taxation in excess of the rate limited."

The assessment amounts to $90,000,000, and at one and a-half yields $1,350,000; the premium bond law requires $600,000, and the balance is insufficient to pay current expenses as confessed in defendant's brief. Then how can the relator ever be paid if he comes under the dominion of this subsequent legislation? His unlimited right to a tax sufficient to pay his judgment is metamorphosed in the twinkling of an eye to a perpetual loan, "payable by a posterity whose children are yet unborn." Instead of an absolute and unqualified judgment, producing fruits by due process of law as contracted for, it is by legislative jugglery transformed into a registered judgment, which, for fifty years to come, must be outranked by twelve millions of premium bonds generated twenty-two years after our contract. We are never to be paid, unless the limitation of one and a-half per cent exceed the *alimony* as defendant calls it, to pay its ordinary expenses, and the interminable caravan of judgment creditors already registered, amounting to over $600,000 has been provided for. If all this be true, and it cannot be denied, it seems impossible that the decree pronounced can be perpetuated by this honorable court, after proper and mature consideration. The act of 1870 not only violates the obligation of the contract but practically destroys it. It reduces a perfect legal right to one that cannot be enforced in a court of justice, because the act of 1876 limits the exercise of the taxing power, and your Honors are powerless to force the city to exceed it, if once relator is bound by the provisions of the act of 1870, to look for payment to the budget provided by the premium bond act of 1876. Relator's contention is that he came under no such contract, and his rights are untouched by the legislation of both or either of these acts under the provisions of the constitution of the United States and that of Louisiana, forbidding any change of his remedies essential to its due and proper enforcement, and that these subsequent laws assassinate his constitutional rights.

Respectfully submitted,

D. C. LABATT.

AUTHORITIES SHOWING THAT THE COURT ERRS IN CONSIDERING THE ACT OF 1870 A VALID AND CONSTITUTIONAL LAW.

Cooley says, page 285: "The 'obligation of a contract' consists in its binding force on the party who makes it. This depends on the laws in existence when it is made. These are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party and the right acquired

by the other. There can be no standard by which to ascer-
41 tain the extent of either than that *which the terms of the contract indicate* according to their settled legal meaning; when it becomes consummated, the law defines the duty and the right, compels one party to perform the *thing contracted for*, and gives the other the right to *enforce the performance by* the REMEDIES THEN IN FORCE. If any subsequent law affect to diminish the duty or to impair the right, it necessarily bears on the obligation of the contract in *favor of one party to the injury of the other;* hence *any law which, in its operations, amounts to a denial or obstruction of the rights* accruing by a contract, *though professing to act only on the remedy*, is directly obnoxious to the prohibition of the constitution."

See McCracken vs. Hayward, 2 How., 612; 12 Wh., 259. In 2 How., 615, the Supreme Court of the United States say: "In Wayman vs. Southard and Bank of U. S. vs. Halstead, 10 Wh., 20–51, that the proceedings on executions were to be governed by such laws until final satisfaction was obtained, *regardless of any subsequent changes by State legislation;*" and speaking of the powers of a State to impair a remedy, the court, in 2 How., 614, says: "If the power can be exercised *to any extent*, its exercise must be a matter of uncontrolable discretion in passing laws relating to the remedy which are regardless of the effect on the right of the plaintiff." See 1 How., 311. "Any subsequent law which denies, obstructs, or impairs this right by superadding a condition affects the obligation of the contract as much in the one case as the other, and the power in a State legislature may be carried to any extent, *if it exists at all.*" Cases may occur where the provisions of a law may be so unreasonable as to amount to a denial of a right, and call for the interposition of the courts. 3 Pet., 200.

42 "When a contract falls within the predicament of being legal and binding, its obligatory force is coextensive with its stipulations." Story on Cons., sec. 1380.

"Laws which affect the validity, construction, duration, or discharge of contracts are not prohibited, because the changes are not regarded as necessarily affecting the obligation of contracts; therefore, whatever belongs *merely to the remedy* may be altered according to the will of a State, *provided* the alteration *does not impair the obligation of the contract* (1 How., Chief Justice Taney, 316); and it does not impair it, *provided it leaves the parties a substantial remedy* ACCORDING TO THE COURSE OF JUSTICE AS IT EXISTED AT THE TIME THE CONTRACT WAS MADE." Cooley, p. 286, and authorities there cited.

Tested by this rule, how can this court maintain that a registry of our judgment submitting its payment to certain conditions purely optional with the debtor to perform or not at his discretion, compensate for the right to enforce payment by the immediate levy of a sufficient tax to pay those judgments? The examples given by Cooley, where the remedies may be changed, are exceptional, and

do not cover the character of the statute under consideration, and are founded on public policy foreign to the act of 1870. Exemptions, however, must not go to the extent to render the remedy nugatory or impracticable. 41 Miss., 119, Stephenson vs. Osborne. "Statutes pertaining to the remedy are merely such as relate to the course and form of proceedings, but do not affect the substance of a judgment when pronounced." Chief Justice Merrick, 15 La. An., 153, Martin vs. Valentine.

"*If the Legislature of a State were to undertake to make a law*
43 *preventing the legal remedy, upon a contract lawfully made and binding on the party to it, there is no question that such Legislature would, by such act, exceed its legitimate powers.*" 8 Mass., 430; 56 Penn., 46; 25 Ark., 641. "Such an act must necessarily impair the obligation of the contract within the meaning of the constitution." 8 Mass., 430; 8 Wall., 599. "And where a statute does not leave a party a substantial remedy according to the course of justice as it existed at the time the contract was made, but shows upon its face an intention to clog, hamper, or embarrass the proceedings to enforce the remedy so as to destroy it entirely, and thus impair the contract so far as it is in the power of the Legislature to do it, *such statute* cannot be regarded as a mere regulation of the remedy and is void." 15 Wis., 28, and Bowdonham vs. Richmand, 6 Greenl., 12; 21 Ind., 144, Rawley vs. Hooker.

In 4 Wall. 535; 15 Wis., 30, and 19 Wis., 468, your Honors will find a similar statute to that of 1870 declared unconstitutional, and the Supreme Court of the United States said: "Unless the corporation imposes and collects the tax *in all respects as if the subsequent statute had not been passed, it will be compelled to do so by mandamus.*"

Lastly, relator refers your Honors to 29 A. R., p. 866. "Reason and authority require that it shall extend to and strike with nullity every law, whether legislative or organic, by which the obligation of pre-existing contracts is impaired." 4 Wall., 277. See also Chief Justice Manning's opinion in Southern Bank case, and 4 Wall., 555. The discussion by the court of the requirement of registry being wise is pertinent and proper enough as to creditors subsequent
to the passage of the law, but relator fails to see how this
44 provision can be legally engrafted on his previous contract, which contained no such stipulation, and by which he was entitled to very different remedies.

The court decides that relator is bound to register his judgments under the acts of 1870, as preliminary to his right to a *mandamus* to compel the levy of a tax if not budgeted, but the court forgets that after registry that law requires the judgment creditor to wait until the taxes for the special purpose of paying him are in the city treasury, "specially designated and set apart for that purpose in the annual budget, etc." Is it not sufficient to say that this law remits the creditor to interminable delays not in his original contract? If they refuse

to register, he must mandamus them to do that; then if they refuse to budget, there is not a word in that statute or any other to authorize your Honors to compel them to do so. It merely says the controller shall warrant "provided always that there be sufficient money in the treasury to pay such judgment specially designated and set apart for that purpose in the annual budget or detailed statement of liability and expenditure, required to be made by section 124 of the act of the Legislature," etc. Not a word obliging them to provide a tax for the registered judgments is any where to be found if it exceeds one and a-half per cent. It is optional and discretionary, and such has been the interpretation by the city fathers and the bitter experiences of its registered creditors.

D. C. LABATT.

45 *Order granting a Re-hearing.*

Extract from the minutes Monday, January 19th, 1880.

The Court was duly opened, pursuant to adjournment, present: their honors, Thomas C. Manning, Chief Justice, and Robert H. Marr, Alcibiade DeBlanc, William B. Spencer, Edward D. White, Associate Justices.

STATE *Ex Rel.* MORRIS RANGER
vs.
MAYOR & ADM'RS OF NEW ORLEANS. } No. 7,566.

It is ordered that the re-hearing applied for in this case is granted.

Opinion and decree of the Court.

Filed March 15th, 1880.

STATE *Ex Rel.* MORRIS RANGER
vs.
MAYOR & ADMINISTRATORS OF THE City of New Orleans } No. 7566.

On Re-hearing.

By Mr. Justice White:

We granted a rehearing, not because we doubted the correctness of our former conclusion, but because, owing to the gravity of the question, we thought it well that an opportunity should be ours to give the issues a second examination before making our decree final. On the rehearing we have had both orally and by brief reviewed & able discussion, and our views remained unchanged. The effect of our re-examination has strengthened our conviction as to their entire correctness. We have expressed them fully in the opinion
46 hitherto filed, and we see no necessity to reiterate them.

It is therefore ordered that our former decree remain undisturbed.

Decree.

Extract from the Minutes.

March 15th, 1880.

The court was duly opened, present their Honors:

Thomas C. Manning, Chief Justice, and Robert H. Marr, Alcibiade DeBlanc, William B. Spencer, Edward D. White, Associate Justices.

STATE *Ex Rel.* MORRIS RANGER
vs.
MAYOR & ADMINISTRATORS OF THE CITY of New Orleans. } No. 7566.

On rehearing. It is ordered that our former decree remain undisturbed.

Petition for Writ of Error.

Filed March 17th, 1880.

STATE *Ex Rel.* MORRIS RANGER
vs.
MAYOR & ADMINISTRATORS OF THE CITY of New Orleans. } No. 7566.

47 To the Honorable, the Chief Justice & Associate Justices of the Supreme Court of the United States of America:

The petition of the State of Louisiana *Ex Rel.* Morris Ranger, who resides in Liverpool, an alien and a subject of Victoria, Queen of Great Britian and Empress of India, respectfully represents:

That in the suit No. 7566 of the Docket of the Supreme Court of Louisiana, at New Orleans, entitled State of Louisiana Ex Rel. Morris Ranger vs. The City of New Orleans, a final judgment has been therein rendered against your Pet'r on the fifteenth March, 1880, by which he is irreparably aggrieved & injured, and he is advised there is manifest error therein to his prejudice. Relator desires to have the said judgment reviewed and reversed by this Hon'ble Court. Relator claims in his pleadings, rights, privileges, and immunities which are protected by the Art. 1st, Sec. 10 of the constitution of the United States, prohibiting the passage of any law, impairing the obligation of contracts, and that the final decree of said Su-
48 preme Court of Louisiana, in last resort, is against the validity of said constitutional provision, and against the right, privilege, and immunity set up and claimed by your relator, under and by virtue thereof upon certain judgments, which were absolute & unqualified for a sum of money exceeding two hundred thousand dollars.

Relator further alleges that the pleadings, decree & reasons for judgment on their face present a Federal question, within the appellate power of this Honorable Court, & the judgment is in violation of said

10th Section of Art. 1st of the Federal constitution & impairs a solemn obligation, to which Relator had a vested right, protected by said Constitution, of which he has been illegally deprived by said final decision; your P'tr avers that this Honorable Court is vested with jurisdiction to revise, review, & reverse said judgment & Petr. is desirous of obtaing a writ of error, for that purpose, returnable according to law, & of complying with the requisites, and stipulations, in such cases made and provided & to give bond, with
49 good surety, as the Court may order & to its satisfaction.

Wherefore the premises & Bond being considered, Petr. prays this Hon'ble Court to grant him a Writ of error, returnable to the Supreme Court at Washington at its next term, to wit, 1st Monday, Oct. 1880, according to law, & that the City of New Orleans, through its Mayor & Administrators be duly cited, & that all proper notices, & services be made thereof according to law & for all general & equitable relief.

(Signed) D. C. & L. L. LABATT,
of Counsel.

Order.

Let a writ of error issue as herein prayed for returnable to the Supreme Court of the United States at Washington, on or before the 1st Monday of October, 1880, on Plff's. giving bond in the sum of one thousand dollars, with good and solvent surety conditioned according to law.

New Orleans, March 18th, 1880.

(Signed) TH. C. MANNING,
Chief Justice.

50 *Bond.*

Filed March 18th, 1880.

United States of America.

Know all men by these presents, that we, Morris Ranger, Relator in sait No. 7566, of Liverpool, England, and A. A. Yates, resident of New Orleans, State of Louisiana, are held and firmly bound, jointly and severally, unto the City of New Orleans Deft. in said suit, *et al.*, Administrators, Successors or assigns, in the sum of one thousand dollars, lawful money of the United States of America, to be paid to the said heirs, executors, administrators, and assigns, for which payment well and truly to be made, we bind ourselves, and each of us, by himself, and each of our heirs, executors, and administrators, firmly by these presents, sealed with our seals, and dated the 18th day of March, in the year of our Lord eighteen hundred and eighty.

Whereas the said Morris Ranger, as Relator, having heretofore, to wit: on the 18th day of March, 1880, taken a Writ of Error to
51 the Supreme Court of the United States, from and to reverse the decree rendered on the 15th day of March, 1880, by the

Supreme Court of Louisiana at New Orleans, Louisiana, in the suit of State of Louisiana *Ex Rel.* Morris Ranger vs. City of New Orleans its Mayor and Administrators, No. 7566 of the docket thereof.

Now the condition of the above obligation is, that if, the above bounden Morris Ranger, shall prosecute his said Writ to effect, and shall answer all damages and costs, if he shall fail to make good his plea, then this obligation shall be void, otherwise to remain in full force and virtue.

(Signed) M. RANGER, per D. C. LABATT, *Atty.*
ppro. MORRIS RANGER.
LOUIS RANGER & CO. [L. S.]
A. A. YATES. [L. S.]

Witness:
(Signed) D. C. LABATT.

Approved.
(Signed) TH. C. MANNING,
Chief Justice.

UNITED STATES OF AMERICA, } ss.
District of Louisiana. }

Personally appeared A. A. Yates of New Orleans, who being
52 duly sworn deposes and says that he is the surety on the within bond, that he resides in New Orleans, Louisiana, and is worth the full sum of one thousand dollars over and above all of his debts and liabilities and property exempt from execution.

(Signed.) A. A. YATES.

Subscribed and sworn before me this 18th day of March, 1880.
[SEAL.] (Signed) J. G. EUSTIS,
Commissioner U. S. Circuit Court, District of Louisiana.

Copy of Writ of Error.

Filed March 20th, 1880.

Supreme Court of the State of Louisiana.

No. 7566.

STATE OF LOUISIANA ON THE RELATION OF
Morris Ranger, Plaintiff in Error,
versus
CITY OF NEW ORLEANS, Defendant in Error. } Writ of Error.

Copy of Writ of Error lodged in the Clerk's Office of the Supreme Court of the State of Louisiana in pursuance of the statute in such cases made and provided this 18th day of March, one thousand eight hundred and eighty.

(Signed.) D. C. & L. L. LABATT,
53 *Attorneys of Plaintiff in Error.*

United States of America, ss.

The President of the United States.

To the Honorable the Judges of the Supreme Court of the State of Louisiana, greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said Supreme Court of the State of Louisiana, before you, or some of you, being the highest court of law or equity in the said State, between the State of Louisiana on the relation of Morris Ranger and the City of New Orleans, defendant, wherein was drawn in question the validity of Article 1 of Section 10 of the Constitution of the United States of America, and the decision of the said court was against the validity of the same, a manifest error hath happened, to the great damage of the said Morris Ranger, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly you send the record and
54 proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held; that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

Witness the honorable Morrison R. Waite, Chief Justice of the Supreme Court of the United States, this 18th day of March, in the year of our Lord one thousand eight hundred and eighty.

[SEAL.] (Signed) F. A. WOOLFLEY,
Clerk of the United States Circuit Court for the District of Louisiana.

Certificate.

STATE OF LOUISIANA,
CITY OF NEW ORLEANS.

Supreme Court of the State of Louisiana.

I, Alfred Roman, Clerk of the Supreme Court of the State
55 of Louisiana, holding session in the City of New Orleans, do hereby certify that the foregoing thirty-six pages contain a full, true, and complete copy of the transcript of the proceedings had in the Third District Court for the Parish of Orleans, in a certain suit wherein The State of Louisiana on the Relation of Morris Ranger was plaintiff and the Mayor and Administrators of the City of New Orleans were defendants, and also of all the proceedings had in this Supreme Court on the appeal taken by said defendants, which appeal is now on the files thereof under the No. 7566.

In testimony whereof I have hereunto set my hand and affixed

the seal of said court, at the city of New Orleans, this twenty-second day of March, *anno domini* one thousand eight hundred
[SEAL.] and eighty, and in the one hundred and fourth year of the Independence of the United States of America.

ALF'D ROMAN,
Clerk.

Judge's Certificate.

I, Thomas Courtland Manning, Chief Justice of the Su-
56 preme Court of the State of Louisiana, do hereby certify that Alfred Roman is Clerk of the Supreme Court of the State of Louisiana, holding sessions in the city of New Orleans; that the signature of Alfred Roman to the within certificate is in the proper handwriting of him, the said clerk; that said certificate is in due form of law, and that full faith and credit are due to all of his official acts as such.

In testimony whereof I have hereunto set my hand and seal, at the city of New Orleans, on this twenty-second day of
[SEAL.] March, anno domini one thousand eight hundred and eighty.

TH. C. MANNING,
Chief Justice of Louisiana.

57 To the Honorable, the Chief Justice and Associate Justices of the Supreme Court of the United States of America.

The petition of the State of Louisiana *ex Rel.* Morris Ranger, who resides in Liverpool, an alien & a subject of Victoria, Queen of Great Britian & Empress of India, respectfully represents:

That in the suit No. 7566 of the docket of the Supreme Court of Louisiana, at New Orleans, entitled State of Louisiana *ex Rel.* Morris Ranger vs. the City of New Orleans, a final judgment has been therein rendered against your Petr. on the 15th March, 1880, by which he is irreparably agrieved & injured, and he is advised there is manifest error therein to his prejudice.

Relator desires to have the said judgment reviewed & reversed by this Hon'ble Court. Relator claims in his pleadings, rights, privileges, immunities which are protected by the Art. 1st, Sec. 10th of the Constitution of the United States, prohibiting the passage of any law, impairing the obligations of contracts, and that the final de-
58 cree of said Supreme Court of Louisiana, in last resort, is against the validity of said constitutional provision, and against the right, privilege & immunity set up & claimed by your Relator, under and by virtue thereof, upon certain judgments, which were absolute & unqualified for a sum of money exceeding Two Hundred Thousand Dollars.

Relator further alleges that the pleadings, decree & reasons for judgment on their face present a Federal question, within the appelate power of this Honorable Court, & the judgment is in violation

of said 10th Section of Art. 1st of the Federal Constitution & impairs a solemn obligation to which Relator had a vested right, protected by said Constitution, of which he has been illegally deprived by said final decision; Your Petr. avers that this Honorable Court is vested with jurisdiction to revise, review & reverse said judgment, & Petr. is desirous of obtaining a Writ of Error, for that purpose, returnable according to law, & of complying with the requisites, & stipulations, in such cases made & provided & to give bond,
59 with good surety, as the Court may order & to its satisfaction.

Wherefore the premises and bond being considered, Petr. prays this Hon'ble Court to grant him a Writ of Error, returnable to the Supreme Court at Washington at its next term, to wit, 1st Monday Oct., 1880, according to law, & that the City of New Orleans through its Mayor and Administrators be duly cited, & that all proper notices & services be made thereof according to law, & for all general & equitable relief.

D. C. & L. L. LABATT,
of Counsel.

Order.

Let a Writ of Error, issue as herein prayed for, returnable to the Supreme Court of the United States, at Washington, on or before the 1st Monday of October, 1880, on Pl'tffs giving bond in the sum of One Thousand Dollars, with good & solvent surety, conditioned according to law.

New Orleans, March 18th, 1880.

TH. C. MANNING,
Chief Justice.

60 (Endorsed.) No. 7566.

In the Supreme Court of the State of La.

STATE OF LA. EX REL. MORRIS RANGER

vs.

CITY OF NEW ORLEANS.

Petition, Orders, Bond for Writ of Error from U. S. S. Ct.

D. C. & L. L. LABATT,
Attys.

Filed March 17th, 1880.

FRANK WALL,
Dy. Clk.

United States of America, ss:

The President of the United States.

To the Honorable the judges of the Supreme Court of the State of Louisiana greeting:

Because, in the record and proceedings, as also in the rendition of

the judgment of a plea which is in the said Supreme Court of the State of Louisiana, before you, or some of you, being the highest Court of law or equity in the said State between the State of Louisiana
61 on the relation of Morris Ranger and the City of New Orleans defendant, wherein was drawn in question the validity of Article 1 of Section 10 of the Constitution of the United States of America, and the decision of the said court was against the validity of the same, a manifest error hath happened, to the great damage of the said Morris Ranger, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, on the second Monday of October next, in the said Supreme Court, to be then and there held, that the record and proceedings aforesaid being inspected, the said Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs
62 of the United States, should be done.

Witness, the Honorable Morrison R. Waite, Chief Justice of the said Supreme Court of the United States, this 18th
[SEAL.] day of March, in the year of our Lord one thousand eight hundred and eighty.

F. A. WOOLFLEY,
Clerk of the United States Circuit Court,
for the District of Louisiana.

(Endorsed)

Supreme Court of the State of Louisiana.
No. 7566.

STATE OF LOUISIANA ON THE RELATION OF MORRIS RANGER,
Plaintiff in error
versus
CITY OF NEW ORLEANS, Defendant in error.

Supreme Court of La.
Filed March 20th, 1880.

FRANK WALL,
D'y Clerk.

The United States of America.
Supreme Court of the State of Louisiana.
The State of Louisiana.

63 To the City of New Orleans and the Mayor and Administrators thereof Greeting:

You and each of you are hereby cited and admonished to be and appear at a Supreme Court of the United States to be holden at the

City of Washington, on the second Monday of October next, pursuant to a Writ of Error filed in the Clerk's office of the Supreme Court of the State of Louisiana, wherein the State of Louisiana on the relation of Morris Ranger is plaintiff in error and the City of New Orleans and the Mayor and Administrators thereof are defendants in error, to show cause, if any there be, why the judgment rendered against the said Morris Ranger as in said Writ of Error mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness, the Honorable Thomas C. Manning Chief Justice of the Supreme Court of the State of Louisiana, this 18th day of March in the year of our Lord one thousand eight hundred and eighty.

64 TH. C. MANNING,
Chief Justice

[SEAL.]

(Endorsed)

Supreme Court of the State of Louisiana.
No. 7566.

STATE OF LOUISIANA ON THE RELATION OF MORRIS RAGGER,
Plaintiff in error
versus
CITY OF NEW ORLEANS, Defendant in error.

Citation.

Marshal's Return.
Received Mar. 20, 1880.

By the U. S. Marshal, and on March 22nd, 1880, I served a true Copy of the within Writ of Error on the City of New Orleans, defendant in error, herein by delivering the same to Isaac W. Patton, the Mayor and representative of the said City of New Orleans, in person at his office in the said City of New Orleans District of Louisiana.

E. S. CURRY,
Dy. U. S. Marshal,
District of Louisiana.

65 Personally appeared before me E. S. Curry, a Deputy Marshal in and for the District of Louisiana, and make oath that he served a true copy of the within writ of error on the City of New Orleans and the Mayor and Administrators thereof, as set forth in his official return hereon.

E. S. CURRY,
D'y U. S. Marshal,
District of Louisiana.

Sworn to and subscribed before me this 23rd day of March, 1880.

T. V. COUPLAND,
D'y Clerk.

OFFICE SUPREME COURT U. S.
FILED
JUL 10 1880
JAMES H. McKENNEY, Clerk.

SUPREME COURT OF THE UNITED STATES.

No. 1156.

THE STATE OF LOUISIANA EX REL. MORRIS RANGER,

vs.

CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

BRIEF OF PLAINTIFF AND APPELLANT.

D. C. LABATT,
Of Counsel.

SUPREME COURT OF THE UNITED STATES.

No. 1156.

THE STATE OF LOUISIANA EX REL. MORRIS RANGER,

vs.

CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

BRIEF OF PLAINTIFF AND APPELLANT.

Statement of the Case.

THIS case is identical in principle and rests on the same facts with that of The United States *ex rel.* Ranger vs. City of New Orleans. 8 Otto, p. 381.

Morris Ranger obtained in the State courts *absolute and unqualified judgments* for one hundred and seventy thousand dollars, with six per cent interest thereon from first of May, 1874, until paid, on certain city railroad bonds, issued under the same laws and ordinances as those in the case

above cited. Executions were duly issued and, after proper demand, were returned *nulla bona*. (See admissions, R., p. 7).

Thereupon relator applied to the Third District Court for the parish of Orleans, which had rendered the judgments, for a writ of *mandamus* on the defendant to levy a sufficient tax to satisfy the judgment. (R., p. 1). The defendant appeared, and filed the following answer to the writ:

"And now come the defendants and for peremptory exception to relator's demand, say he is not entitled to relief in the form and manner prayed for by him. Wherefore they pray that relator's demand be rejected with costs."

At the trial, the court considering the answer frivolous, made the mandamus peremptory, and ordered the mayor and administrators of the city to levy, within a reasonable time, not later than the month of December, 1879, and thereafter concurrently with the collection of other taxes levied during the present year, to collect, set apart and pay over to the relator herein a tax sufficient to pay and satisfy the judgments described in the petition herein filed, with interest and costs, etc. (R., p. 5).

From this judgment the city took an appeal to the Supreme Court of Louisiana, which reversed the judgment of the court below, and the case is now here on writ of error sued out by relator.

In his petition for mandamus relator did not fail to allege "That his rights are fully protected by the Constitution of the United States, Article I, section 10, and that no subsequent law or decision can impair them," the denial of which by the Supreme Court of Louisiana pro-

perly presents for review a Federal question, within the jurisdition of this Honorable Court. (R., p. 2.)

On p. 7 the following statement of facts was agreed upon:

"*First*—That the judgments which are made the basis of this mandamus proceeding were rendered for the amounts, principal and interest and costs, and at the dates stated in the petition, and had for their basis, bonds issued by the city of New Orleans, in 1854, to the New Orleans, Jackson and Great Northern Railroad Company and New Orleans, Opelousas and Great Western Railroad Company.

"*Second*—That writs of fieri facias were issued on said judgments, and after due demand, made upon the city, were returned *nulla bona;* and that the city has no property liable to seizure and sale.

"*Third*—That said judgments have never been registered in accordance with the provisions of act of 1870.

"It is further agreed that this statement of facts is made in lieu of the note of evidence taken at the trial which has been mislaid."

The Supreme Court of Louisiana reversed the decision of the Third District Court on the ground that the act No. 5 of 1870 is constitutional and binding on relator, and that he is bound to proceed under that statute to register his judgments before he can obtain the mandamus to levy a tax to satisfy the absolute judgments under his contract of 1854. Relator makes the following assignment of errors:

"*First*—That the act No. 5 of 1870, *quoad* relator's judgments, is illegal and unconstitutional and violates the clause of the Federal Constitution, forbidding a State

from impairing the obligation of a contract, and is a material change of his remedies forbidden by the paramount law.

"*Second*—That the decision is erroneous in subjecting relator, whose rights accrued and were fixed by the laws of 1854, to the dominion of a statute passed sixteen years thereafter, avowedly for the purpose of affecting relator's rights of property and depriving him of the means to enforce his contract as protected and guaranteed by the Federal and State constitutions.

"*Third*—That if relator is bound by the provisions of the act of 1870 to register, then he is equally bound by all its other provisions, which practically impairs, undermines and destroys his rights and remits him to a scheme for payment which is a mockery and delusion, destructive of his contract."

For the convenience of the court, the act of 1870 will be found at the end of this brief.

Argument and Authorities.

By the title of act No. 5, your Honors will observe, its principal object is to destroy and annihilate the writs of *fi. fa.* and *mandamus* against the city of New Orleans upon past and future contracts, obligations and judgments, and to substitute in their stead a *scheme* of registry to be followed up by a reference of these registered judgments for payment through an annual budget, which is limited to a tax of one and one-half per cent, the practical effect of which is that the budget, after the payment of the city current expenses, leaves nothing to be applied to the extinguishment of the registered judgments. The title of the act is: "To limit and restrict the power of

courts to issue orders or writs of *mandamus* and *fieri facias* against the city of New Orleans and the officers thereof, and to declare the effect and prescribe the mode of satisfying judgments for money against the city of New Orleans." The invitation to register the judgment is the opening scene in the drama of practical repudiation, insiduously concealed beneath the concluding clause of the second section which consigns the unfortunate creditor who registers to the tender mercies of a limited budget, insufficient to leave any funds to meet these judgments after they are registered, when it says: "*Provided always*, that there be sufficient money in the treasury to pay such judgment, specially designated and set apart for that purpose in the annual budget or detailed statement of items of liability and expenditure, required to be made by the one hundred and twenty-fourth section of the act of the Legislature, entitled "An act to amend an act entitled 'an act to consolidate the city of New Orleans and the administration of the affairs thereof,' approved March 20, 1856, or SUCH LAWS AS MAY BE HEREAFTER ENACTED RELATING THERETO." Now, under this reservation, the charter of the city, as to its budget, has been altered and amended by the inauguration of a new scheme called the "Premium Bond Law of 1876," the text of which is given in the 8th Otto, United States *ex rel.* Ranger vs. City of New Orleans, and forms now the only budget law of the corporation. Your Honors in that case silently declared that the premium bond law could in no manner impede relator's right to his mandamus. Now, the only difference between that case and this is that the city unsuccessfully plead as a defense, an act passed *twenty-two* years after our contract, and in this case

pleads an act passed *sixteen* years after our contract; the former act being the culmination of the scheme of defiance inaugurated by the latter, but in every other respect the two cases being identical. They are on similar unqualified judgments; they are on similar bonds, issued by virtue of similar laws, ordinances and authority, and the same principles are applicable to the enforcement of the contract, unaffected by subsequent legislation or judicial opinions. The invitation to creditors to register their judgments, under the act of 1870, is regarded by the Supreme Court of Louisiana as not impairing the obligation of relator's contract made in 1854, because standing by itself it seems an innocent or inocuous formality which should be preliminary to the demand for a mandamus. But that learned Court pretermits the vital issue, that if that part of a subsequent statute is obligatory on antecedent creditors, then the registry remits the creditor to all the other parts of the act and the pursuit of its provisions to obtain ultimate payment, and he would not be heard to accept a part and reject the rest. It is no answer to say that the creditor might successfully question the legality of every other provision of the act, because registry being the *first step* in a complicated scheme making payment depend on a limited budget, would necessarily fall with the unconstitutionality of all its other parts.* Registry is only the means and not the object of the bill, and is not mentioned in the title as required by the Constitution of Louisiana of 1868, and if the object of the bill is unconstitutional, the means provided to attain that object would fall with the illegality of the act.

In other words, relator is a creditor under a contract affected with no limitations to enforce its obligation, and

* See Cooley's Con. Lim. pp 177 178 179 3rd Ed

the Supreme Court of Louisiana decided that an act passed sixteen years after can alter and impair that contract so as to force the creditor to register, under a law which limits his right to be paid to a budget, which shall not exceed a limited tax, and producing no revenue applicable to his judgment. Practically the act of 1870 is an interminable postponement of pay day, until its sequel the premium bond law, requiring fifty years to extinguish, has been fulfilled.

The attempted requirement to register relator's judgments, which the State Supreme Court thinks is legal and innocent on antecedent contracts, forcibly illustrates the diplomacy of the spider's address to the fly. "*Ce n'est que le premier pas que coûte.*" Standing by itself, if the return of the city had shown that registry would have immediately been followed by prompt *payment*, it might have been a sufficient return, *but there is no such pretense.* The invitation of the spider, to walk into his parlor, was *prima facie* innocent enough, but the danger was, after being once in, how the unfortunate fly could retreat with safety; and so a judgment creditor who registers and accepts the conditions of the hollow statute of 1870, would find it impossible to extricate himself from its meshes; he would find that he had novated his judgment to await the pleasure of the City Council.

Although we deem it a work of supererogation to discuss questions which are elementary in this august tribunal, a sincere respect for the opinion of the Supreme Court of Louisiana in this case demands that we should reproduce here the argument and authorities addressed to them to avert the erroneous decree.

In the first brief addressed to our Supreme Court coun-

sel for relator used the following language: "It would be idle to inflict on this Court a review of the law and authorities which culminated in the Supreme Court of the United States unanimously reversing Judge Billings' decision and issuing a mandamus on precisely similar bonds, similar ordinances, and the same laws governing this case. In that litigation every possible defense was made by the city which the ingenuity of counsel could invent, and we refer to the decision as the best brief, even if it were not an authority entitled to the utmost respect. If the city claims that Act No. 5 of 1870 prohibits our courts from issuing a mandamus against the defendants, then our reply is, such legislation obstructs, hinders and impairs, and was subsequent to, our contract, and not constitutional, under authorities familiar to and elementary in this Court, and that it will follow the highest law in the land, rather than establish the theory that there are two laws for the same litigant, in the same State, on similar judgments." "There should not be one law at Rome and another in Athens," etc.

The act of 1870, in suits against the city of New Orleans, in direct terms closes the courts having jurisdiction to render judgment, from enforcing their decrees by ordinary process existing when the contract was made, and subjects such creditors to new and onerous conditions and delays, which emasculate their rights, and we cited the case of Johnson vs. Duncan, 3 M. O. S., 538, decided by Louisiana's great Chief Justice, Martin, in 1815, in which are to be found all the principles since consecrated by your Honors in numerous bond cases. At that early day this great jurist was imbued with a clear conception of the principles on which the jurisprudence in relation to the

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sacredness of contracts should rest under the ægis of the Federal Constitution. He said:

"It is no longer a question in the United States whether unconstitutional acts of the legislature be of any force or effect." This State is among those the Constitution of which contains an express provision on this subject: "All laws contrary to this Constitution shall be null and void;" and this Court, in Brooks vs. Weyman, (ante 12) determined it was their province to inquire into and pronounce upon the constitutionality of any law invoked before them. If, therefore, the section under consideration really impairs the *obligations* of contracts, we must declare it null and void."

The obligation of contracts consists in the necessity under which a man binds himself to do or *refrain from doing something*. This obligation exists generally both in *foro legis* and *foro consientiæ*, though it does at times exist in one of these only. It is certainly of the first, that in *foro legis*, which the framers of the Constitution spoke when they prohibited the passage of *any law* impairing the obligations of contracts.

Now, a law absolutely recalling the power which the *creditor enjoys of compelling* his debtor in *foro legis* to perform the obligation of his contract would be a law destroying the obligation of the contract in *foro legis*, since a right without a legal remedy ceases to be a legal right. It would impair the obligation of the contract by destroying its legal obligation, in other words, by reducing an obligation both in *foro legis* and *conscientiæ* to an obligation in *foro conscientiæ* only. A legal and moral right to a moral right only.

The remedy in *foro legis constituting the legal right of the*

creditor, constitutes also its correlative, *the legal duty or obligation of the debtor;* and a law which reduces a legal to a moral obligation is one which, in *foro legis*, destroys the obligation. It appears, therefore, to me incorrect to say that the legislature may effectually do as to the *remedy or effect* of the obligation that which it cannot do as to the *right*, and I conclude that a law destroying or impairing the *remedy is as unconstitutional* as one affecting the right in the same manner, for in *foro legis* the effects of both laws must be the same." Now, there is no power of subtlety or rational logic capable of sustaining the pretension that the "act of 1870" is an adequate remedy for the writ of execution and the writ of mandamus which, by the obligations issued in 1854, the defendant agreed to refrain from changing *quoad* relator. The tardy process of registering judgment to take his place behind an interminable caravan of unpaid creditors, and await the exercise of the will of certain administrators, as to when his judgment should be budgeted under a limited tax, transferring to their moral sense the sacred legal rights relator once possessed to enforce the prompt and effectual discharge of its legal obligations, hardly preserves the obligations of his contract. Judge Martin settles this point by saying: "Likewise, a law procrastinating the remedy, generally speaking, destroys a part of the right. He pays *less* who pays *later*, *minus solvit qui serius solvit.* Neither is the procrastination properly compensated by the allowance of interest in the meanwhile. To many men in many circumstances there is a wide difference between $100 payable to-day and one hundred and six payable in a twelvemonth, whatever the certainty that no disappointment will occur, and in many cases the delay is likely to

be productive of considerable danger to the solvability of the debtor. *Any indulgence*, therefore, *in point of time, afforded by the legislature to the debtor, is a correlative injury to the creditor in the same degree*, though of a *different nature, as a correspondent indulgence by a proportionate reduction of the debt.*"

Now look at the act of 1870, and your Honors will find that its proper title should have been "an act to secure indulgence from the city's creditors, past and future, and to pay judgments, provided always, there be sufficient money in the treasury to pay such judgments, specially designated and set apart for that purpose, in the annual budget," etc. By their contract with the relator it was one of the obligations of the defendant that they would refrain from changing his remedy so as to diminish his rights, the most sacred of which was that he could, when it was made, *mandamus* them to levy a tax to pay him without conditions or limitations whatsoever, and in violation of this contract, the defendant now seeks to enforce a statute which relieves them from those incidents essential to the existence of the creditor's rights. It will not do to say he will ultimately be paid under that statute; it is enough that pay day is procrastinated, and that an indulgence is interpolated by the act of 1870, not found in the original contract, and which materially affects its obligations and invalidates the act under the Federal Constitution. Judge Martin adds: "That such were the impressions of the framers of the Constitution will appear if, in expounding that instrument, we follow the rules laid down for the exposition of statutes. If we consider the old law, the mischief and the remedy. The charter of our Federal rights was framed not many years after the termination of the war which secured our independence. The disasters

attending the arduous conflict had disabled many an honest individual from punctually discharging his obligations, and the legislatures of some of the States, more attentive to afford immediate and temporary relief than a more remote and lasting one *by a sacred regard for good faith* and the consequent preservation of credit, passed laws ameliorating the condition of debtors, to the *injury and ruin* of creditors. In one State an emission of paper money, for the redemption of which no day was fixed, nor any fund provided, was made a legal tender, in other words, an obligation to pay gold and silver was impaired, by being reduced to an obligation to pay irredeemable paper. Elsewhere a similar obligation was *impaired* by being reduced to an obligation to deliver a tract of pine barren land, or an installment law was passed and an obligation to pay *to-day* was impaired by being reduced to an obligation to pay at *several periods* at the distance of intervening years." *This last description of law is precisely the "act of 1870" in substance.* "Such was the *old law*. The consequent diminution of the fortunes of several individuals, the total ruin of others, and the indispensable concomitant, *the destruction of credit*, produced a stagnation of business which considerably affected public and private prosperity. Such was the *mischief*." These same mischiefs have been reproduced in the late history of the State of Louisiana and the affairs of the city, and from the date of such a policy the credit and honor of both have been steadily declining, until now there is "none so poor to do either reverence," because we have forgotten the lessons of experience and the honest instructions of our fathers, and have been recreant to the principles embodied in the organic laws of the land.

Judge Martin continues: "The Federal compact pro-

vided that the Legislature of no State should retain the power of making anything but gold and silver a tender in discharge of debts, in order to avert in future the mischiefs resulting from laws impairing the obligation of a contract to pay gold and silver by reducing it to an obligation to pay paper, pine barren land, or indeed anything but gold and silver. Yet the *remedy* was not commensurate with the evil; the healing process was, therefore, continued in order to prevent the passage of laws impairing the obligation of a contract *to pay to-day*, by reducing it to an obligation to pay on a *distant day* or days, or indeed *any attempt at a legislative interference between parties to a contract* by *favoring* either party to the injury of the other, and it was provided that no State should pass any law impairing the obligations of contracts. I therefore find no difficulty in concluding that an act of a State legislature, the obvious object of which is to relieve debtors by *postponing the recovery* and consequently the payment of debts impairs the obligation of contracts, and as such is unconstitutional and THE COURT IS BOUND TO DISREGARD IT, whatever may be the hard necessity which, in the opinion of those who exercised the legislative powers of the State appeared to require that they should come to the aid of their suffering fellow-citizens. *Fiat justitia, ruat coelum.*

"The people of the United States, assembled in Federal convention, have decreed that no State legislature should exercise the right of thus *stepping in between the parties to a contract, and the judges are bound by their oath of office to prevent the violation of the constitutional injunction.*"

He then discusses the *immaterial* alterations reserved to the State which are not liable to the prohibition, but the

"act of 1870" cannot be construed as within any of those principles reserved to the legislature, as your Honors may see by reading that celebrated decision. The "act of 1870" attempts obviously to limit, restrict and take away from relator, whose contract anteceded it, the right to enforce his execution by a mandamus to levy a tax to pay his judgments, and is a nullity under the test laid down by Judge Martin of "favoring the debtor to the injury of the creditor, and putting off indefinitely, pay day, by making the contract subject to new conditions, new formalities, budgets, taxes, money in the treasury specially provided for that judgment," etc., all conditions not in the original contract or laws governing the contract. As the Supreme Court of the United States said: "A clearer case of a statute violating the Constitution never came under our observation."

In 8 Otto, page 608, the United States Supreme Court says: "We are of opinion, therefore, that the act in question was intended not to change the substantial rights of the parties to the suit which it authorized, but to provide a specific method of procedure, which, by removing restrictions on the jurisdiction, process and pleading in ordinary cases would give a larger scope for the action of the court, and a more economical and efficient remedy than before existed, and that it is a valid and constitutional exercise of legislative power." This was said, be it remembered, of an *act of Congress* which is not governed by the clause in the Constitution, that "no State shall impair the obligation of a contract," and your Honors see that it was because the act amplified the process of court, and that it was not deemed a change of the substantial rights of the parties that it was held to be within the powers of

Congress. We would remark, that as there is no restriction on Congress impairing the obligation of a contract, that act was valid for a reason which does not apply to a State.

In the Ranger case, 8 Otto, p. 391, your Honors will find that the point was distinctly made which covers this case, viz: "It is not alleged in the answer that the statutory limit of taxation has been reached, nor does it appear that any limit existed when these bonds were issued. No limit subsequently imposed can curtail the power or affect the duty of the city in respect to them." Van Hoffman's case, 4 Wall., 555; Butz vs. Muscatine, 8 Wall., 575; 2 Wood, 461, and cases there cited; 48 Ala., 446, and cases there cited. In that case the premium bond act of 1876 was pleaded as a legal substitute for relator's rights unsuccessfully, and the act of 1870 fades into nothingness if that was deemed not to affect his remedy.

In the original petition to obtain judgment on these railroad bonds, Mr. Ranger pleaded that this act of 1870 stood in the way of the enforcement of his judgments, and in his prayer he asked that the law be declared unconstitutional, but in rendering the absolute and unqualified judgment, the Supreme Court of Louisiana evaded this issue, and said it was premature, and it would be time enough to decide it when used as a shield; therefore, in our brief in this mandamus suit relator used the following language: (p. 2.)

"Your Honors will bear in mind that when Mr. Ranger brought suit on the bonds to obtain the judgment which he seeks to enforce by this mandamus, he alleged and attacked the unconstitutionality of the act of 1870, and your Honors held he was premature and pretermitted the

question until the city should use it as a shield. That time has come, and the sole question is whether the subsequent legislation of 1870, by which essential remedies for the enforcement of our contract and its obligations, existing when it was made in 1854, can be legally taken away, changed, altered or impaired, under the Constitution of the State and that of the Federal Constitution forbidding the impairment of the obligation of contracts, *in the least degree?*" In vain we urged upon that learned Court "that the nicety and accuracy of the fathers of the Federal Constitution in the use of words, to express their intentions, have often been justly lauded, and in no instance is their praise so just as when they inserted the word "*impair*" to embody their meaning. They did not say "*injure*" or "*destroy*," words almost synonymous, because these words would not actually convey their full intention. To "*injure or destroy*" implies a direct, sudden, immediate assault upon a contract; but to "*impair*" conveys all these results, attainable, however, by sly, insidious, artful, ingenious or silent approaches of an undermining tendency, gradual in its character, but fatal in the end; a little to-day and a little more the next day, and finally frittering away a party's substantial rights by interminable delays, circumlocution and indirection, until he finds himself grasped by a hand of iron, concealed beneath the softest glove. "*Impair*" seems to be in regard to "*injure*" as the *species* to the *genus*—what is injured is not necessarily impaired. The terms are not convertible in logic. To "*impair*" is a "progressive mode of injury, while an injury may take place either by degrees or by an instantaneous act."—(Crabbe's Synonyms, p. 405.) Thus, it must be ascertained whether the act of 1870,

which attempts to destroy effectually the writs of *fi. fa.* and *mandamus* in city judgments, and substitutes *"registry,"* with an enforced postponement of payment, at the will of the debtor, or until his budget *shall designate* a creditor's judgment, under a limited tax, shall have in its coffers taxes gathered for that especial judgment, *impairs*, or diminishes one's pre-existing right to enforce payment of an unqualified judgment, by an immediate levy of taxes, as the law stood when the contract was made is within the prohibition? If so, it is stricken with nullity and must be disregarded.

There cannot be a doubt, that such was its deliberate intention; it was the purpose and object of the statute, and it is equally indubitable, that the Legislature of Louisiana was shorn of all authority to legislate in that direction, *quoad* relator, under the all-wise provision of the Federal Constitution invoked by him. Its true title better would have been "An act to destroy pre-existing rights of creditors of the city of New Orleans and to postpone indefinitely the collection or payment of any judgment rendered against it, and to prevent judgment creditors from entering the courts of the State to obtain writs of *fi. fa.*, *mandamus*, or other order, to which they are entitled, known as *'due process'* or the *'laws of the land?'*"

Now, may it please your Honors, let us analyze this vulnerable statute of 1870 and test whether it does not directly impair the obligations of the contract made with plaintiff in 1854. At the time these railroad bonds were issued and by which a perfect contract was solemnly created between the State, the city and the bondholder, the creditors of the city were entitled, under articles 641

and 642 of the Code of Practice, to have their judgments enforced in the following manner: "When the judgment orders the payment of a sum of money, the party in whose favor it is rendered, may apply to the clerk of the court and obtain from him a writ of *fieri facias* against the property of his debtor. This writ is directed to the sheriff of the parish where the property of the debtor is situated, and orders him to seize the property, real and personal, rights of the debtor, and sell them to satisfy the judgment obtained against him." Certain decisions of the Supreme Court having exempted, from motives of public policy, the ordinary revenues of the city from seizure, and the powers of the corporation being ample to impose as a duty on its officers, to raise funds by taxation, to meet promptly its liabilities, on the return of a *fi. fa. nulla bona*, the writ of *mandamus* was permitted by the same Code of Practice, art. 829, to bring about the desired result, and is in fact, the only mode of satisfying a judgment against a recalcitrant municipal corporation. The article reads as follows:

"*Mandamus* is an order issued in the name of the State by a tribunal of competent jurisdiction, and addressed to an individual or corporation or court of inferior jurisdiction. directing it to perform some certain act belonging to the place, duty or quality with which it is clothed." Art. 830 says: "The object of this order is to prevent a denial of justice or the consequence of defective police, and it should, therefore, be issued *in all cases* where the law has assigned no relief by the ordinary means, and where justice and reason require that some mode should exist of redressing a wrong or an abuse of any nature whatever." Art. 831: "This order may be issued at the dis-

cretion of the judge, even when a party has other means of relief, if the slowness of ordinary legal forms is likely to produce such a delay that the public good and the administration of justice will suffer from it."

Now, relator contends that this act of 1870 was invented and passed to circumvent creditors of the city of New Orleans, obtaining absolute judgments, from using these two essential remedies in legal machinery, which practically paralyzes their just rights and transforms certain judgments into vain mockeries, mere delusions and shadows, if sanctioned by courts of justice. As to contracts with the city after the passage of this act, relator is not interested and does not pretend to insist whether it be or not constitutional, but his argument and contention is that *quoad* contracts existing at the time its unconstitutionality is patent. The "registry" of the judgment, in lieu of execution, being a preliminary means, subjecting the creditor to all the terms and delays of the rest of the scheme of postponement it prescribes, cannot be sustained as constitutional, if the inevitable results of registry are decided to be beyond legislative power, and stricken with nullity, on the theory of "*sublata fundamentum cadit opus.*" Therefore, the question here propounded is: Can the Act No. 5 deprive judgment creditors of the city, (who refuse its pretended benefits) holding bonds issued in 1854 and due in 1874, of rights and remedies *vested* in them, under solemn contracts made before its passage, or take away, change or diminish the remedies furnished by then existing laws for their enforcement and satisfaction? Despite the fact that the proposition seems elementary in this Honorable Court, and that the affirmation of such a principle seems clearly contrary to natural justice and to an

enlightened jurisprudence, it may still serve to review the authorities by which its negation has been uniformly supported. Relator undertakes the task more out of deference to the high Court of Louisiana than from any necessity to do so in this Honorable Court, and to serve as a reply to what defendant may urge in support of that erroneous decree.

The constitution of the United States, section 10 of article 1, provides that "no State shall pass any *ex-post facto* law, or law impairing the obligation of contracts, and article 110 of the constitution of Louisiana of 1868 provides *'no ex-post facto* law or retro-active law, nor any law impairing the obligation of contracts shall be passed; nor vested rights be divested, unless for purposes of public utility and for adequate compensation made." Mr. Madison, in the Federalist, p. 242, gives the best history of this provision in the Federal Constitution, and it is quoted by Mr. Webster in the celebrated Dartmouth College case. He writes, "bills of attainder, *ex-post facto* laws and laws impairing the obligation of contracts, are contrary to the first principles of the social compact, and to every principle of sound legislation. The two former are expressly prohibited by the declarations prefixed to some of the State constitutions, and all of them are prohibited by the scope and spirit of these fundamental charters. Our own experience has taught us, nevertheless, that additional fences against these dangers ought not to be omitted. *Very properly, therefore, have the convention added this constitutional bulwark in favor of personal security and private rights;* and I am much deceived, if they have not, in so doing, as faithfully consulted the genuine sentiments as the undoubted interests of their constituents. The sober

people of America are weary of the fluctuating policy which has directed the public councils. They have seen with regret and with indignation that sudden changes and *legislative interferences*, in cases affecting personal rights, became jobs in the hands of enterprising and influential speculators, and snares to the more industrious and less informed part of the community. They have seen, too, that one legislative interference is but the first link of a long chain of repetitions, every subsequent interference being naturally produced by the effects of the preceding. They very rightly infer, therefore, that some *thorough reform* is wanting, which will banish speculation in public measures, inspire a general prudence and industry, and give a regular course to the business of society." What inspired statesmanship! What an exhaustive delineation of human nature is depicted in these accurately expressed thoughts! No comment can enlarge or strengthen them. Further suggestions would only weaken their truth and vigor. They are golden precepts, announced by a political sage, a "Conscript Father," and peculiarly prophetic of the effects of this vicious statute since its passage, because the credit of the city has steadily declined, until now she is a by-word and reproach financially. The bonds that were once the favorites of capitalists, at a premium, are now the sport of street brokers and the shuttlecocks of speculators at a ruinous depreciation. The first provision of the act opens with the innocent ceremony of "registry," but the last section refers payment to the annual budget, which by amendment has ripened into the "Premium Bond Act of 1876," under a limited tax of one and one-half per cent, which forbids and prohibits any levy to pay judgments which would make the gen-

eral taxes exceed the limitation, so that the creditors of the city by judgment are invited to a brilliant *prosopopeiæ*, at which there is actually nothing to eat. Judge Story, commenting on the above article of the United States Constitution, says:

"WHAT MAY PROPERLY BE DEEMED 'IMPAIRING THE OBLIGATION OF A CONTRACT.'

"Any deviation from its terms by postponing or accelerating the performance it prescribes, *imposing conditions not expressed in the contract, or dispensing with the performance of those which are a part of the contract*, HOWEVER MINUTE OR APPARENTLY IMMATERIAL in their effect upon it, impairs the obligation. *A fortiori*, a law which makes the contract wholly invalid and extinguishes or releases it, is a law impairing it. Nor is this all. Although there is a distinction between the obligation and the remedy upon it, yet if there are certain remedies existing at the time when it is made, all of which are afterwards wholly extinguished by new laws, so that there remains no means of enforcing the obligation and no redress, such an abolition of all remedies, operating *in presenti*, is also an impairing of the obligation of such contract."—(Story, Cons., ed. 1873, vol. 2, p. 245.)

By the above quoted articles of the constitutions, State and Federal, and the accurate language of Judge Story and other authorities, let us test the validity of sections first and second of Act No. 5, 1870, which is invoked by defendant to prohibit its judgment creditors from obtaining writs of *fi. fa.* to obtain satisfaction of solemn judgments rendered against it, and upon return *nulla bona*, to have the usual writ of mandamus, to levy and collect by taxation sufficient to keep its contract?

The first section says: "That from and after the passage of this act, no court within the State shall have authority or jurisdiction to allow, order, hear, entertain or enforce any summary process or proceeding, or writ or order of mandamus, or any order or proceeding in the nature of an order or writ of mandamus either against the controller, deputy controller, or any auditing officer of the city of New Orleans, the object of which shall be, either directly or indirectly, to obtain or compel said controller or deputy controller or auditing officers to issue and deliver any order or warrant for payment of money; or against the treasurer, assistant treasurer, or any officers charged with the disbursement of the moneys of the city of New Orleans, the object of which shall be, either directly or indirectly, to enforce the payment of money claimed to be due from the city of New Orleans to any person, persons, corporation or corporations whatsoever; but all actions or proceedings for the recovery of any sum of money claimed to be owing by the city of New Orleans shall be in the ordinary form of action instituted against the city of New Orleans as a corporation, and not against any branch, department, or officer thereof, and shall in all respects be conducted in the same manner as ordinary actions." So far as this section is concerned, it seems to prohibit the courts of Louisiana from issuing the *preliminary* or original writ of mandamus as a court of general jurisdiction before judgment, but as it permits them to render judgment in the ordinary way, that section is defective to prevent the court from enforcing its conceded jurisdiction, by mandamus, as auxiliary to the writ of *fi. fa.*, returned *nulla bona.* In other words, relator contends, that as he obtained a valid, absolute judg-

ment from a competent court, he had a right to an execution, and after due demand on defendant was returned *nulla bona*, there is nothing in that section to prevent its enforcement by *mandamus*. The court had ample jurisdiction to render the judgment, but where, in the first section, is any law abridging the power of the court to enforce its decree by the use of the latent process, inherent in every court to exercise jurisdiction until satisfaction is obtained? In such a case the *mandamus* runs not to the city or any branch of its departments to pay the debt, but simply to perform plain ministerial duties in order to place in their coffers, by proper taxation, sufficient money to keep their contract and discharge official functions assumed under oath. The act is cunning and crooked enough, but properly interpreted, it does not seem to affect relator's case even if the act is otherwise constitutional. "It would seem an anomaly in the judicial system of any government to invest its courts with jurisdiction to hear causes and render judgments and yet deny them the power to execute and enforce their judgments;" U. S. vs. Jeff. Co. in U. S. Circuit Court, *Arks. Central Journal*, Aug. 16, 1878, p. 130. "Jurisdiction is defined to be the power to hear and determine the subject matter in controversy, in the suit before the court, and the rule is universal, that if the power is conferred to render the judgment or enter the decree, it also includes the power to issue proper process to enforce such judgment or decree." "Express determination of this court is, that the jurisdiction of a court is not exhausted by the rendition of the judgment, but continues until the judgment shall be satisfied. Consequently a writ of error will lie when a party is aggrieved in the foundation, pro-

ceedings, judgment, or execution of a suit in a court of record."

Process subsequent to judgment is as essential to jurisdiction as process anterior to judgment, else the judicial power would be incomplete and entirely inadequate to the purposes for which it was conferred by the constitution; Riggs vs. Johns Co., 6 Wall., 166, 187.

Mandamus is a step towards the execution of the judgment, and necessary to the jurisdiction of the court. Sup. vs. Durant, 9 Wall., 417.

This act No. 5 violates every canon embodied in the above authorities. It allows the court to render judgment and then paralyzes its resulting functions, and closes its doors to the judgment creditor, by a special statute in favor of a particular debtor, contrary to justice, equity and law, in opposition to the Bill of Rights, in the Constitution of 1868, which says: "The courts shall always be open."

Mr. Hamilton, in the *Federalist*, p. 364, maps out the duty of judges in interpreting such a statute, and says: "The complete independence of the courts of justice is peculiarly essential in a limited constitution. By a limited constitution I understand one which contains certain specified exceptions to the legislative authority; such, for instance, as that it shall pass no bills of attainder, no *ex post facto* laws, and *the like.* Limitations of this kind can be preserved in practice no other way than through the medium of courts of justice, *whose duty it must be to declare all acts contrary to the manifest tenor of the Constitution void;* without this, all reservation of particular rights or privileges would amount to nothing." And again: "The courts were designed to be an intermediate body between

the people and the legislature, in order, among other things, to keep the latter within the limits assigned to their authority. *A constitution is in fact and must be regarded by the judges as fundamental law.* It must, therefore, belong to them to ascertain its meaning, as well as the meaning of any particular act proceeding from the legislative body. If there should happen to be an irreconcilable variance between the two, that which has the superior obligation and validity ought, of course, to be preferred; in other words, the constitution ought to be preferred to the statute, *the intention of the people to the intention of their agents.*" At page 367, Mr. Hamilton proceeds to mark out the duty of the courts in relation to inconsistent statutes, and says that judges have adopted a rule, as consonant with truth and propriety, to follow the last statute rather than the former; but in regard to the interfering acts of a superior and subordinate authority, of an original or derivative power, the nature of the reason of the thing indicates the converse of that rule as proper to be followed. They teach us that a prior act of a superior ought to be preferred to the subsequent act of an inferior and subordinate authority; and that accordingly, whenever a particular statute contravenes the constitution, it will be the duty of the judicial tribunals to adhere to the latter and disregard the former." "Some things lie too deep in the common sense and common honesty of mankind to require either argument or authority to support them, and this, I think is one of them." U. S. Ct. Ct., Macon Co. vs. Shores, Oct., 1877. Any other view of this extraordinary statute, or the adoption of defendant's theory, leaves relator practically in the condition so graphically described by the Supreme Court of

Arkansas in State vs. Curran, 12 Ark., 366, "in which all his rights live but in grace, his remedies in entreaty only." "An interpretation of a statute that leads to an unjust result should not be adopted," and when a particular construction, and even the most obvious one, would lead to an unreasonable result, a different construction will be given, if possible, without doing too much violence to the letter."—Sedgwick on Const. Law, p. 235. "A construction of law that would impute to the legislature a design to perpetrate an unconscionable and barefaced *fraud* ought to be avoided, if it can be fairly and reasonably done. (2 Woods, 633, Milner vs. Pensacola.) Now, the decision below insists that the act, so far as it prescribes "registry of city judgments," is within the legitimate power of the legislature, because considered alone, it does not diminish the right of relator under his contract, and is a change of the remedy reserved under a limited number of decisions touching this reserved power, and is preliminary to the exercise of a *mandamus*. Conceding this, for the sake of argument, then we submit, whether a State law which is not *general*, but to exempt a favorite by a private act from seizure, and special in its character, is such a change in the remedy as is allowable under the principles of those limited decisions. In other words, we do not deny that the State might change remedies, provided adequate substitution therefor are given, but they must be *general* and not under *special* laws. Otherwise, the State might pass laws exempting each individual citizen by name from having an execution issued against him, and thus destroy existing remedies until the debtor chooses to set aside enough out of his revenues to keep prior contracts.

An interpretation which recognizes power, by special legislation, to abolish or suspend the ordinary remedies for the enforcement of judgments and to exempt an influential individual or corporation from their effect, seems repugnant to all the principles of justice and common honesty underlying the social or governmental fabric. We contend that the Legislature has no right, under the pretense of changing the remedy, to deprive a litigant by previous contract of the ninety-ninth part of a fibre of any remedy, essential to its full enjoyment and enforcement. When it is considered that in the case at bar the exemption is in favor of a powerful sub-division of the State (the defaulting debtor in the contract), whose members of the Legislature form one-sixth of that body, the wisdom and foresight of the "Fathers" in the Federal restriction on such legislation, glitters, like an electric light at midnight, upon a stormy coast. The Louisiana Court "*halted*" and refused to test the constitutionality of the principal features and object of the act, because it found that mere "registry," considered alone, was an innocuous ceremony, which did not impair relator's rights, but we submit that, if the rest of the act were unconstitutional, did impair his contract, and were null and void, what became of the provisions requiring registry? Did they not fall still-born with the inherent vice of its subject-matter? Therefore, the Court erred, and were betrayed into a misapplication of Scripture, and refused to remove but embraced the "evil thereof." A strange picture is presented by the litigation, when your Honors' judgment in the 8th Otto is being collected diligently by the city of New Orleans, on the same character of bonds, and the mandamus is being enforced, and here

it resists the inevitable result foreshadowed by that decision, obliging relator to go a thousand miles to get *justice*.

"SEC. 2. *Be it further enacted, etc.*, That hereafter no writ of execution, or *fieri facias* shall issue from any of the courts in this State, against the city of New Orleans, but final judgment against the city of New Orleans, condemning said corporation to pay any sum in money, when the same shall have become executory, shall have the effect in law of establishing and fixing the amount of the plaintiff's demand against said corporation, and the plaintiff may cause a certified copy of the said judgment, together with a copy of the plaintiff's petition, and the defendant's answer in the cause in which said judgment is rendered, together with the certificate of the clerk of said court, that such judgment is final and executory, to be filed in the office of the controller of said city, and it shall be the duty of the controller or auditing officer of said corporation to receive the same and cause the same to be registered in his office, of the date on which the same shall have been presented, and when so registered it shall be the duty of the controller to warrant on the treasurer or disbursing officer of the corporation for the amount due thereon, without any special appropriation of money therefor by the Common Council; *provided*, always, that there be sufficient money in the treasury to pay such judgment, specially designated and set apart for that purpose in the annual budget or detailed statement of items of liability and expenditure, required to be made by the one hundred and twenty-fourth section of the act of the legislature, entitled an act to amend an act entitled 'An act to consolidate the city of New Orleans, and to provide for the government of the city of New Orleans and the

administration of the affairs thereof,' approved March 20, 1856, or such laws as may be hereafter enacted relating thereto."

The language of this section is too plain and explicit to leave any doubt as to the intent of the act, which, in truth, was to abolish and destroy the only writ and the only remedy by which a court, having jurisdiction, could enforce its decrees and command respect for its orders, and without substituting or leaving in its place *to the court* any similar, adequate, efficient means or remedy of any form whatever. There is a well defined limitation in law to legislatures changing remedies, which has been violated and transcended in this statute, and of which the creditor complains, that the obligation of his contract and the means of its enforcement have been taken away, and that his rights are recognized, but stripped of the power of legal coercion. We may realize the picture of Samson's helplessness shorn of his strength, or the mid-day sun bereft of its beams; but a judgment of a court, which it cannot enforce, transforms a perfect legal obligation into a mere moral one, binding only on the conscience of the debtor.

We see the Legislature of the State, after creating the corporation of New Orleans in 1805, and conferring upon it power and authority to make contracts, to incur debts, to issue obligations or bonds for the same, and to levy taxes to provide for their payment—inducing the public and capitalists of the world to invest in these obligations or bonds, on the faith of the honor of the State that the contract and the rights flowing therefrom of every kind will not be infringed by subsequent legislation, turn round and enact a law prohibiting those creditors from enforcing pay-

ment by the use of the legal machinery which formed part and parcel of that obligation as if written on its face! This statute attempts to abolish the only efficient remedy secured to them, by the then existing laws, and in its place pretends to provide a mode of payment, not only expensive and complicated, but practically postponing collection to a future so distant that it may be said with truth, "that those taxpayers who are to contribute will be of a 'posterity whose children are yet unborn.'" This test of its unconstitutionality is, as aptly said by Judge Martin, to be conclusive, "*minus solvit qui serius solvit*"—"He pays less who pays later." Such being the consequence and the inevitable result of the second section of act No. 5 of 1870, it may well be asked if courts of justice can possibly countenance or uphold legislation so clearly unconstitutional and unjust, if not positively inquitous?

The remedies of the writ of execution and the writ of mandamus existed by law in 1854, when the bonds were issued. Those writs, in city cases, were afterwards abolished by the act of 1870, and there remained no adequate legal means of enforcing the obligation or the judgment *to the court* which rendered the judgment; and the unfortunate creditor was left without legal redress of any kind, except to register and take his place behind an innumerable caravan of exhausted, attenuated judgment creditors, to whom payment was to be made after $12,000,000 of premium bonds, with five per cent interest, had been provided for, on a tax of one and one-half per cent on $100,000,000 of assessment, and even then the act leaves at the option or discretion of the debtor to designate a special tax to pay these judgments. Judge Story says: "Such an abolition of the remedy operating *in presenti*

is an impairing of the obligation of the contract." It is indisputable that, as to antecedent contracts, the Legislature was powerless to pass any law of the kind, and the authorities are direct and conclusive. Judge Cooley, on Constitutional Limitations, p. 285, says:

"The obligation of a contract, it is said, consists in its binding force on the party making it. *This depends upon the laws in existence when it is made;* these are necessarily referred to in all contracts and form a part of them as the measure of the obligation to perform them by the one party and the right acquired by the other. * * * The law defines the duty and the right, compels one party to perform the thing contracted for, and gives the other a *right to enforce the performance by the remedies then in force.* If any subsequent law affect to *diminish the duty*, or to impair the right, it necessarily bears on the obligation of the contract in favor of one party to the injury of the other, *hence any law, which in its operations* amounts to a *denial* or *obstruction* of the rights accruing by a contract, though professing to act only on the remedy, is directly obnoxious to the prohibition of the Constitution."

These conclusions of eminent writers and learned judges are fully sustained in numerous decisions: 1 How., 311; 17 Pet., 28; 2 How., 612; 12 Wh., 259, 302, 318; 9 Wis., 577; 3 Met., (Ky.) 566; 10 How., 206; 15 How., 304; 24 How., 401; 15 Wis., 36; 19 Wis., 468; 2 Wall., 10; 2 Black, 448; 12 Wh., 213; 9 Cal., 81; 39 Ala., 353; 14 Rich., 148; 31 Penn., 175; 4 Wh., 122; 1 How., 311; 2 How., 608; 4 Litt., 34, 47; 16 Wall., 314; 43 Geo., 537.

In McCracken vs. Howard, (2 How., 612) the Court said: "The obligation of a contract * * * is the law which binds the parties to perform the agreement.

The law then which has this binding obligation must govern and control the contract *in every shape* in which it is intended to bear upon it, whether it affects its validity or discharge."

In Ogden vs. Saunders, (12 Wh., 259 and 392), the Court says: "The law of the contract forms the obligation. The obligation of the contract consists in the *power* and *efficacy* of the law which applied to and enforces the performance of the contract." "Whatever belongs merely to the remedy may be altered according to the will of the State; *provided*, that the alteration does not impair the obligation of the contract; and it does not impair it provided it leaves the parties a substantial remedy, *according to the course of justice*, as it existed at the time the contract was made." (Cooley, Const. Lim., p. 286, and numerous authorities). And at p. 289: "But a law which deprives a party of all legal remedy must necessarily be void. If the legislature of a State were to undertake to make a law *preventing the legal remedy* upon a contract lawfully made and binding on the party to it, there is no question that such legislature would, by such act, exceed its legitimate powers. Such an act must necessarily impair the obligation of the contract, within the meaning of the constitution. * * * And where a statute does not leave a party a substantial remedy, *according to the course of justice*, as it existed at the time the contract was made, but shows upon its face an intention to clog, hamper or embarrass the proceedings to enforce the remedy, so as to destroy it entirely, and thus impair the contract, so far as it is in the power of the legislature to do it, such statute cannot be regarded as a regulation of the remedy, and is void." One could imagine Judge Cooley was describing

the Act No. 5 of 1870 when he deduced the principles above asserted.

As the Supreme Court of the United States said upon a similar statute "a clearer case of a law, impairing the obligation of a contract, we have never seen," (4 Wall., City of Quincy); again, at page 290, Judge Cooley says: "And in any case the lawful repeal of a statute cannot constitutionally be made to destroy contracts which have been entered into under it; so where, by its terms, a contract provides for the payment of money by one party to another, and by the law then in force property would be liable to be seized and sold on execution to the highest bidder, to satisfy any judgment creditor on such contract, a subsequent law, forbidding property from being sold on execution for less than two-thirds of the valuation, made by appraisers, pursuant to directions contained in the law, *though professing* to act only on the remedy, amounts to a denial or obstruction of the rights accruing by the contract, and is directly obnoxious to the prohibition of the Constitution." 2 How., 608; 2 Doug. Mich., 172; 21 Ind., 144. "So a law which, as to existing mortgages, foreclosable by sale, prohibits the sale for less than half the appraised value of the land, is void for the same reason." 3 How., 707; 1 How., 311.

These authorities abundantly and conclusively show that the remedy forms part of the contract, and that any law taking wholly away the remedy existing by law for the enforcement of the obligations of a contract, at the time it was made, impairs it, and is, therefore, unconstitutional. This is precisely the point in the case under consideration. When the contract was made with the city of New Orleans, its creditors had ample remedies at law

to enforce, through the officers of the law, payment and satisfaction of any judgments they might obtain against the city upon their contracts. But afterwards the act of 1870 attempts to denude the courts of jurisdiction and to paralyze their judicial functions. The remedies were not simply modified or changed and others conferred to be used "in the course of justice" by the courts, but they were *completely abolished* without substituting in their place any other adequate, similar or effective remedy *for the courts* to exercise "according to the course of justice," and were in favor of a particular favorite or special corporation, leaving the general laws untouched.

The foregoing authorities, relator contends, abundantly show that he is not forced by any of the principles of law to come under the dominion of an inimical statute, which touches in the slightest degree, the obligation of his contract, or the means of enforcement existing when it was made. Whether it be better or worse for him, he has the right to say "*Non in hæc fœdera veni.*" He is content to stand upon his contract. The error of the Louisiana court consists in regarding "registry" as a new and cumulative remedy, whereas it is avowedly required in lieu of the writs of *fi. fa. and mandamus*, and intended to supply their places as adequate remedies, ignoring the fact that once this "Trojan Horse" is accepted, its bowels are filled with interminable delays and postponements of pay day, *enabl*cing the "Premium Bond Law of 1876," by which all hopes of an early settlement are annihilated for his and his children's life time. Your Honors in 8 Otto rejected the tail of this statute, and you are now asked to recognize the head and front of this legislative monster by the defendant. A learned jurist and able writer

says: "An obligation is not measured merely by its literal terms; it must be met in good faith, according to its sense, spirit and equity. It is held under every code of morals and of law, in all civilized countries, that a performance which keeps the word of promise to the ear and breaks it to the hope, is no performance at all.

4 Wall., 535; 15 Wis., 30, and 19 Wis., 468; 29 An. Rep. La., p. 866; 4 Wall., 277, 555; Chief Justice Manning, opinion in Southern Bank case, now on appeal in Supreme Court, U. S.; 31 A. R. La., and Merrick, C. J., 15 La. An., 153, Martin vs. Valentine; and 30th A. R. *ex rel.* Henry vs. City of N. O.

An attempt was vigorously made to subject relator, on similar pleadings in 8th Otto, to the dominion of identical legislation, but it was promptly denied by this august tribunal, the only difference being that here, the defendant pleads the initiatory statute of 1870, there the resulting statute of 1876, both statutes being part of a *scheme* to evade the consequences of prior contracts. As your Honors suggested, this litigation, endorsed and approved by the Supreme Court of Louisiana, only exhibits an insensibility to the obligation of contracts which must shock the moral sense of any enlightened jurisprudence, and evinces a decadency of commercial honor which, if unchecked, will poison the body politic and end in repudiation and disgrace. Your Honors said: "The judgment was absolute and unqualified, and it was *too late* after judgment to qualify it *by urging any provision of a subsequent statute;* that an execution had issued and was returned *nulla bona*, and this was the sole condition preliminary to the writ of *mandamus.*" The two cases are substantially identical and indistinguishable.

The Supreme Court of the United States say, that if there is any reason why the judgment should not be enforced in the ordinary way, as absolute, it should have been extended in the judgment itself; and it is now too late to cure the defect, even if it were proper before rendition, and they went further and said that the premium bond law presented no such right. The distinguished attorney for the city never dreamed of pleading the act of 1870, but he did rely on its sequel, the "Premium Bond Law," to destroy the effect of its absolute and unqualified character, at the argument and by brief for a rehearing, without success.

Can it be successfully maintained, that the act of 1870, supplies a sufficient or adequate substitute for the writs of *fi. fa.* and *mandamus.*

Sections first and second are already given above. Now section third is as follows: "That in case the amount designated in the annual budget for the payment of judgments against the city of New Orleans, at the date when any judgment against said corporation shall have been final and executory shall have been exhausted, the Common Council shall have power *if they deem proper*, to appropriate from the money set apart in the budget or annual statement for contingent expenses, a sufficient sum of money to pay said judgment or judgments, but if no such appropriation be made by the Common Council then all judgments shall be paid in the order in which they shall be filed and registered in the office of the controller from the first money next annually set apart for that purpose." Now let us analyze the provisions of the second and third sections, which are claimed to replace substantially the writs of *fi. fa* and mandamus (taken away from the courts)

and which are said to afford judgment creditors an adequate remedy instead.

First—That when a judgment condemning the city to pay any sum of money shall be definitve and become executory, it shall have the effect of establishing and fixing the amount of plaintiff's demand against the city. This provision is self-evident and futile, and is no remedy. Every definitive judgment settles what the defendant owes plaintiff.

Second—That the plaintiff must then obtain a certified copy, etc., to be filed and registered, etc., and when so registered, it shall be the duty of the controller to warrant on the treasurer or disbursing officer of the corporation for the amount due thereon, *without any special* appropriation of money therefor by the Common Council; *provided always, "that there be sufficient money in the treasury to pay such judgment, specially designated and set apart for that purpose in the annual budget or detailed statement of items of liability, etc., required by its charter."* The money specially designated must first get there, before you can get a warrant to draw it out, and who is to put it there? The act is silent on this essential feature, to make it a substitute for the writs of *fi. fa.* or *mandamus*, and is a delusion and empty mockery. What sort of a remedy is that which simply changes your absolute judgment into a "warrant" on its treasurer to pay, *provided the money is there*, specially designated in the annual budget and set apart to pay that particular judgment!! Of course the treasurer will not pay any such warrant, because he is only authorized to pay warrants for which special appropriations of money have been made and the funds in his hands be previously specially designated for that purpose, so that

the *unfortunate* creditor is completely in the power of the *fortunate* debtor, and has in law extinguished or novated his judgment by receiving a "warrant" that never can be paid, until the debtor condescends to look to that particular judgment, and voluntarily provide for its payment in the annual budget. Verily, this is a "new way to pay old debts."

Besides, the act is so contradictory that it is even doubtful whether a creditor can get even the worthless "warrant." The section authorizes it on registration, but the proviso practically forbids its issue, "unless there shall be sufficient money in the treasury to pay such judgments, specially designated and set apart in the annual budget," etc. Now the conclusion is inevitable, from the conflicting and obscure provisions of this remarkable statute, and necessarily, that this so-called remedy of registration and issuance of warrants is not only *limited and restricted* to the amount of money on hand for that purpose, but is purposely left to the *discretion* of the Common Council to say *when it may please them* to designate and set it apart in the annual budget, and therefore as it is a pure matter of discretion, and not a duty, no court can enforce its exercise by a writ of mandamus, even to execute the objects of the law itself.

A further fatal objection to this act is found in the constitution of 1868, and fully set forth in brief for rehearing, page 11. "*All courts shall be open*, and every person for injury done him in his land, goods, person or reputation, shall have adequate remedy by *due process of law and justice* administered *without denial or unreasonable delay*." This act shuts up the courts, in certain cases over which it has jurisdiction to render judgments, and

takes away processes of law and justice and lodges a substitute, not in the courts, but in a *non-judicial body, or the breasts of members of the City Council*, contrary to the words and spirit of the fundamental law of the State, and is moreover utterly destructive of vested rights. As Mr. Prentiss once said, "Prometheus stole the fire of Heaven and lodged it in a hollow tree," and it is equally vicious to lodge the question of payment in the breast of a defaulting debtor, at his pleasure or discretion.

Again, if there are not appropriated sufficient funds, and set apart to pay the warrants issued for registered judgments, the holders of such warrants are powerless and cannot be paid until the Common Council "*deem it proper* to appropriate the necessary funds, and if such appropriation is not made, then the judgments or warrants issued for them *are to be postponed and paid out of the first money next annually set apart for that purpose.*" All this sounds well, but where, in the act, is the obligation and duty imposed on the Common Council to appropriate and set apart each year in its budget the sum required to pay in full these registered judgments, interest and costs, *and to designate them specially*, either during the year in which they have been issued or which may be registered during the succeeding year? The answer is, nowhere. Nothing of the kind is found in the act, expressly or impliedly. Everything to that effect is left designedly to the discretion, option and whim of the Common Council, who being limited by a tax of 15 mills, find their power of taxation exhausted to pay current expenses and interest on premium bonds, and it is powerless to exercise even a discretion. A small volume could be written on this statute to maintain its unconstitutionality. Since its

passage the credit of the city has steadily declined, and its registered judgments amount to $668,483 73, bearing 5 per cent interest per annum. Its annual appropriation, without designation, is $10,000 last year and $20,000 this year, "to pay judgments," which does not suffice to reduce the annual interest, so that payment under its operation is a mathematical impossibility. As a proper return to relator's writ of mandamus, based on a *fi. fa.* returned *nulla bona*, it was incumbent on the defendant to aver and prove that by this act and by registry relator's judgment could and would be satisfied by ordinary legal means. He has not done so. In vain, we urged that "after the decision in the Ranger case at Washington, in which the defendant exhausted every possible defense, on similar bonds, between the same parties, relator confidently supposed there would be no legal technicality to obstruct the issuance of the writ, and he only presented a short brief citing that case, but the able (though erroneous) views of the previous opinion, which, fortunately for him, have not been perpetuated, admonish him with due deference to discuss at some length the principles governing his legal rights, and he relies upon your Honors' allegiance to authority and love of justice to affirm the judgment of the court below."

In the recent case of Memphis vs. U. S. (7 Otto, p. 284), the Court says: "It is an acknowledged principle that a creditor by contract has a *vested right to the remedies* for the recovery of a debt which existed at law when the contract was made, and that the Legislature of a State cannot take them away without impairing the obligation of the contract, though it may modify them and even substitute others, if a different remedy be left or another

sufficient one be provided. The law is, in effect, a part of the contract." (See also 6 Otto, 595.) "*Lex semper debet remedium*" (Ashly vs. White, 2 Lord Raymond, 953.) The true theory of the authority to change the remedy is that it must vest the new remedy *in the courts—not lodge it with the debtor, to be executed by him.* This would be "to commit the lamb to the care of the wolf," which is abhorent to the civil law in regard to tutorship. "*Ubi jus—ibi remedium*, and this must be enforced *by the courts*" (Field on corporations, sec. 360, p. 395). "An execution is said to be the end and fruit of the law—*executio est finis et fructus legis.* It makes the judgment effective, and usually all property rights and credits not exempt from execution are subject to satisfaction of the judgment." (Field on Corp., p. 445, sec. 411.)

Some jurists say that the only proper mode of executing judgments against municipal corporations, is now by *mandamus* and not by *fieri facias*, but the law is that it is essential to obtain a *mandamus* that the relator should allege and prove an execution returned *nulla bona.* The best authority on the subject is Dillon on Municipal Corporations. He says, section 685:

"*Mandamus* is one of the principal remedies by which municipal and public corporations are compelled to perform their duties towards their creditors," and in section 686, "it will not lie, if there be a plain and complete remedy by the more ordinary processes of the law; and this principle has been applied to the mode of compelling municipal corporations to meet their liabilities and obligations." "When a judgment is obtained, and there is no property subject to execution out of which it can be made, *mandamus* will lie; when the claim is reduced to a

judgment, the duty to provide for its payment becomes perfect and if it can be paid in no other mode, it must be done by the levy and collection of a tax for that purpose, and this duty will be enforced by *mandamus*."

Therefore, relator contends that to prevent the writ in this case, execution being in court returned "*nulla bona*," it was incumbent on defendant to show, by his sworn return, that the money to satisfy it could be had by registry under the act of 1870, or his return was demurrable and insufficient on its face, as was the case in the suit at Washington on same bonds called the "Ranger case," 8 Otto. This was not attempted, because it was impossible to be true, as a part of the public history of the city's financial distress, and hence the error into which the Court *a qua* was inadvertently misled in saying relator should have tried the vain and fruitless ceremony of registry, and that the mandamus was premature.

The reasoning of the Louisiana Court, in support of its reversal, reaches the acme of sophistry. It is unsupported by law, the facts or the pleadings. They say: "*For aught that we know, for aught that appears by the Record, the city will pay relator's claim immediately upon its registry.*" "Act 5 directs it so to do if there are funds, as to which we are not advised." Here, the Court which had rendered the judgment in favor of Morris Ranger against the city, on these railroad bonds, the payment of which she had defaulted in 1874; a defendant notoriously bankrupt, whose expenses for years, since 1873, exceed by thousands her annual budget, not to mention the absence of any provision to pay matured bonds or judgments, in the face of a *fi. fa.* returned *nulla bona*, deciding; that the record did not show that the city was unable and unprepar-

ed to pay, with or without registry?! By the terms of act 5 it inevitably appeared that, as relator's judgments were not registered, it was legally impossible that the city should have in her coffers, money specially designated to pay relator's judgment; nor was it to be budgeted, except *after registry*, as preliminary to the levy of a tax within the limitation of one and one-half per cent. These facts refute the theory that the Court was not advised by the the record, whether the city would pay the "claim immediately on its registry." The opposite fact was palpable to the Court that no provision was made to pay the bonds when due; that judgments were obtained after a fruitless appeal by the defaulting debtor to the Supreme Court; that execution issued, and after due demand was returned *nulla bona;* that if taxes had been gathered to pay plaintiff it was the duty of the officials to have paid them over on the execution or to make that fact appear in the return to the *mandamus;* and lastly, that as the statement of facts shows a refusal to register, it was a legal impossibility that there could be any funds on hand applicable to plaintiff's judgments in defendant's treasury "specially designated for that purpose." All these circumstances teemed from the record, and the presumption of the Court, that upon registering his judgment the city will at once pay it or provide for its payment by levying a tax in due course of administration, or "that the city will levy an insufficient tax or hold itself bound, in regard to relator's debt, by the limitations of the premium bond act of 1876, if that limitation is unconstitutional," is unwarranted in law and purely imaginary and contrary to the facts. The city shielded itself under act No. 5, and its provisions which

embodied the premium bond law, with the attending limitation, precisely as she unsuccessfully urged before your Honors in the 8th Otto case, on same bonds, between same parties. The record shows that the city had done all the Court presumed she would not do.

The court further treats "the registry of judgments as a wise and useful provision, tending to restrain the reckless levy of taxation and to afford, in compact form, a correct knowledge of the city's liabilities." How a registry of a judgment, obtained after due citation and regular proceedings, in the office of the debtor with additional costs and interest, restrains the corporate authorities, or enlightens them as to their liabilities, or in any way diminishes the burdens of the taxpayer, can better be imagined than described; assuredly, the best remedy for any such evil would have been for the city to have kept step to the maturity of their obligations, and to have ascertained those liabilities *before* and not *after judgment.* The answer to all the reasons given by the learned court of Louisiana is found in the stubborn fact, that the city said to the sheriff: "*We have no funds to pay you.*" The city makes no defense in its pleadings, that if relator would register his judgments the funds would be promptly forthcoming, but, on the contrary, says: "Under act No. 5 you must register, and under subsequent amendments of the charter our budget is limited to a tax of $1\frac{1}{2}$, and you must take your chance of payment under the premium bond law of 1876." The Court imagines a case outside the record when it says: "We apprehend that no court would grant relator's prayer and order a special tax if the city tendered payment, upon the condition that the relator first registered his judgment." The object of

registry under act No. 5 was to postpone, not facilitate, payment.

The principle is well settled that the extraordinary writ of *mandamus* can only be resorted to and obtained after a plain and complete remedy at law by the ordinary process has proven unavailing and fruitless. Art. 830, Code of Practice, embodies this principle: "The object of this order is to prevent a denial of justice, and it should therefore be issued in all cases where the law has assigned no relief by ordinary means, and where justice and reason require that some mode should exist of redressing a wrong or an abuse of any nature whatsoever." Moses on Man, pp. 15, 229; High on Ex. Lex. Rem., secs. 5, 10, 15, 16; C. P., arts. 641 and 642. As a consequence of jurisdiction, this writ cannot be taken away from the courts and a substitute therefor lodged in the *discretion* of the debtor.

In conclusion, relator respectfully asks that the decision be reversed and that of the original court affirmed—*the tax to be levied in December, 1880, instead of 1879.*

Respectfully submitted,

D. C. LABATT,
For Relator.

AUTHORITIES.

Cooley says, page 285: "The 'obligation of a contract' consists in its binding force on the party who makes it. This depends on the laws in existence when it is made. These are necessarily referred to in all contracts, and forming a part of them as the measure of the obligation to perform them by the one party and the right acquired by the other. There can be no standard by which to

ascertain the extent of either than that *which the terms of the contract indicate* according to their settled legal meaning; when it becomes consummated, the law defines the duty and the right, compels one party to perform the *thing contracted for* and gives the other the right to *enforce the performance by the* REMEDIES THEN IN FORCE. If any subsequent law affect to diminish the duty or to impair the right, it necessarily bears on the obligation of the contract in *favor of one party to the injury of the other;* hence *any law which, in its operations, amounts to a denial or obstruction of the rights* accruing by a contract, *though professing to act only on the remedy*, is directly obnoxious to the prohibition of the constitution."

See McCracken vs. Hayward, 2 How., 612; 12 Wh., 259. In 2 How., 615, the Supreme Court of the United States say: "In Wayman vs. Southard and Bank of U. S. vs. Halstead, 10 Wh., 20–51, that the proceedings on executions were to be governed by such laws until final satisfaction was obtained, *regardless of any subsequent changes by State legislation;*" and speaking of the powers of a State to impair a remedy, the Court, in 2 How., 614, says: "If the power can be exercised *to any extent*, its exercise must be a matter of uncontrolable discretion in passing laws relating to the remedy which are regardless of the effect on the right of the plaintiff." See 1 How., 311. "Any subsequent law which denies, obstructs or impairs this right by superadding a condition affects the obligation of the contract as much in the one case as the other, and the power in a State legislature may be carried to any extent, *if it exists at all.*" Cases may occur where the provisions of a law may be so un-

reasonable as to amount to a denial of a right, and call for the interposition of the courts. 3 Pet., 200.

"When a contract falls within the predicament of being legal and binding, its obligatory force is co-extensive with its stipulations." Story on Cons., sec. 1380.

"Laws which affect the validity, construction, duration, or discharge of contracts are not prohibited, because the changes are not regarded as necessarily affecting the obligation of contracts; therefore, whatever belongs *merely to the remedy* may be altered according to the will of a State, *provided* the alteration *does not impair the obligation of the contract* (1 How., Chief Justice Taney, 316); and it does not impair it, *provided it leaves the parties a substantial remedy* ACCORDING TO THE COURSE OF JUSTICE AS IT EXISTED AT THE TIME THE CONTRACT WAS MADE." Cooley, p. 286, and authorities there cited.

Tested by this rule, how can this Court maintain that a registry of our judgment submitting its payment to certain conditions purely optional with the debtor to perform or not at his discretion, compensates for the right to enforce payment by the immediate levy of a sufficient tax to pay those judgments? The examples given by Cooley, where the remedies may be changed, are exceptional, and do not cover the character of the statute under consideration, and are founded on public policy foreign to the act of 1870. Exemptions, however, must not go to the extent to render the remedy nugatory or impracticable. 41 Miss., 119, Stephenson vs. Osborne. "Statutes pertaining to the remedy are merely such as relate to the course and form of proceedings, but do not affect the substance of a judgment when pronounced." Chief Justice Merrick, 15 La. An., 153, Martin vs. Valentine.

"*If the Legislature of a State were to undertake to make a law preventing the legal remedy, upon a contract lawfully made and binding on the party to it, there is no question that such Legislature would, by such act, exceed its legitimate powers.*" 8 Mass., 430; 56 Penn., 46; 25 Ark., 641. "Such an act must necessarily impair the obligation of the contract within the meaning of the constitution." 8 Mass., 430; 8 Wall., 599. "And where a statute does not leave a party a substantial remedy according to the course of justice as it existed at the time the contract was made, but shows upon its face an intention to clog, hamper or embarrass the proceedings to enforce the remedy so as to destroy it entirely, and thus impair the contract so far as it is in the power of the legislature to do it, *such statute* cannot be regarded as a mere regulation of the remedy and is void." 15 Wis., 28, and Bowdonham vs. Richmand, 6 Greenl., 12; 21 Ind., 144, Rawley vs. Hooker.

In 4 Wall., 535; 15 Wis., 30, and 19 Wis., 468, your Honors will find a similar statute to that of 1870 declared unconstitutional, and the Supreme Court of the United States said: "Unless the corporation imposes and collects the tax *in all respects as if the subsequent statute had not been passed, it will be compelled to do so by mandamus.*"

Lastly, relator refers your Honors to 29 A. R., p. 866. "Reason and authority require that it shall extend to and strike with nullity every law, whether legislative or organic, by which the obligation of pre-existing contracts is impaired." 4 Wall., 277. See also Chief Justice Manning's opinion in Southern Bank case, and 4 Wall., 555. The discussion by the Court of the requirement of

registry being wise is pertinent and proper enough as to creditors subsequent to the passage of the law, but relator fails to see how this provision can be legally engrafted on his previous contract, which contained no such stipulation, and by which he was entitled to very different remedies.

The Court decides that relator is bound to register his judgments under the act of 1870, as preliminary to his right to a *mandamus* to compel the levy of a tax if not budgeted, but it ignored that after registry that law requires the judgment creditor to wait until the taxes for the special purpose of paying him are in the city treasury, "specially designated and set apart for that purpose in the annual budget," etc. Is it not sufficient to say that this law remits the creditor to interminable delays not in his original contract? If they refuse to register, he must mandamus them to do that; then if they refuse to budget, there is not a word in that statute or any other to authorize your Honors to compel them to do so. It merely says the controller shall warrant "provided always that there be sufficient money in the treasury to pay such judgment specially designated and set apart for that purpose in the annual budget or detailed statement of liability and expenditure, required to be made by section 124 of the act of the Legislature," etc. Not a word obliging them to provide a tax for the registered judgments is anywhere to be found if it exceeds one and a half per cent. It is optional and discretionary, and such has been the interpretation by the city fathers and the bitter experiences of its registered creditors.

D. C. LABATT.

APPENDIX.

AN ACT

To limit and restrict the power of Courts to issue orders or writs of mandamus and *fieri facias* against the city of New Orleans and the officers thereof, and to declare the effect and prescribe the mode of satisfying judgments for money against the city of New Orleans.

SECTION 1. *Be it enacted by the Senate and House of Representatives of the State of Louisiana in General Assembly convened,* That from and after the passage of this act no court within the State shall have authority or jurisdiction to allow, order, hear, entertain or enforce any summary process or proceeding, or writ or order of mandamus, or any order or proceeding in the nature of an order or writ of mandamus, either against the controller, deputy controller or any auditing officer of the city of New Orleans, the object of which shall be, either directly or indirectly, to obtain or compel said controller or deputy controller or auditing officer to issue and deliver any order or warrant for payment of money, or against the treasurer, assistant treasurer or any officer or officers charged with the disbursement of the moneys of the city of New Orleans, the object of which shall be, either directly or indirectly, to enforce the payment of money claimed to be due from the city of New Orleans to any person, persons, corporation or corporations whatsoever; but all actions or proceedings for the recovery of any sum of money claimed to be owing by the city of New Orleans shall be in the ordinary form of action instituted against the city of New Or-

leans as a corporation, and not against any branch, department or officer thereof, and shall, in all respects, be conducted in the same manner as other ordinary actions.

SEC. 2. *Be it further enacted, etc.*, That hereafter no writ of execution or *fieri facias* shall issue from any of the courts in this State, against the city of New Orleans, but final judgment against the city of New Orleans, condemning said corporation to pay any sum in money, when the same shall have become executory, shall have the effect in law of establishing and fixing the amount of the plaintiff's demand against said corporation, and the plaintiff may cause a certified copy of the said judgment, together with a copy of the plaintiff's petition, and the defendant's answer in the cause in which said judgment is rendered, together with the certificate of the clerk of said court, that such judgment is final and executory, to be filed in the office of the controller of said city, and it shall be the duty of the controller or auditing officer of said corporation to receive the same and cause the same to be registered in his office, of the date on which the same shall have been presented, and when so registered it shall be the duty of the controller to warrant on the treasurer or disbursing officer of the corporation for the amount due thereon, without any special appropriation of money therefor by the Common Council; *provided*, always, that there be sufficient money in the treasury to pay such judgment, specially designated and set apart for that purpose in the annual budget or detailed statement of items of liability and expenditure, required to be made by the one hundred and twenty-fourth section of the act of the legislature, entitled an act to amend an act entitled "An act to consolidate the city of New Orleans, and to provide

for the government of the city of New Orleans and the administration of the affairs thereof," approved March 20, 1856, or such laws as may be hereafter enacted relating thereto.

SEC. 3. *Be it further enacted, etc.*, That in case the amount of money designated in the annual budget for the payment of judgments against the city of New Orleans, at the date when any judgment against the said corporation shall have been final and executory, shall have been exhausted, the Common Council shall have power, if they deem it proper, to appropriate from the money set apart in the budget or annual estimate for contingent expenses, a sufficient sum of money to pay said judgment or judgments, but if no such appropriation be made by the Common Council, then all judgments shall be paid in the order in which they shall be filed and registered in the office of the controller from the first money next annually set apart for that purpose.

SEC. 4. *Be it further enacted, etc.*, That if, by reason of the failure of the controller or the auditing officer of the city of New Orleans, or of the treasurer or disbursing officer of said corporation, to perform his duty, or if, by reason of the neglect or malfeasance of them, or either of them, any person, persons, corporation or corporations shall be unjustly delayed in the payment of any judgment or demand against the city of New Orleans, or shall not be paid in their due and regular order in which such demands are entitled to be paid, and shall be prejudiced and suffer loss and damage thereby, or by reason of any unjust preference to other creditors, such person, persons, corporation or corporations, so injured by the act of either of said officers, shall have a right of action against

such officer or officers, individually, by whose act or acts he or they have suffered loss or damage, and against the surety or sureties on the official bond of such officer, and may recover damages therefor against said officer and sureties for such amount as they may establish on the trial of such cause.

SEC. 5. *Be it further enacted, etc.,* That this act take effect and be in force from and after its passage, and that all acts and parts of acts in conflict with this act be and are hereby repealed in so far as the same conflict with any of the provisions of this act.

No 767

OFFICE SUPREME COURT
FILED
OCT 29 1902
JAMES H. MCKENNEY

SUPREME COURT OF THE UNITED STATES.

No. 767.

THE STATE OF LOUISIANA EX REL. MORRIS RANGER,
Plaintiff in Error,

vs.

THE CITY OF NEW ORLEANS.

IN ERROR TO THE SUPREME COURT OF THE STATE OF LOUISIANA.

Brief for Defendant.

E. HOWARD McCALEB,
City Attorney for the City of New Orleans, Defendant in Error.

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Brief for Defendant.

The only question in this case, submitted to the Court for determination is, does Act No 5 (passed by the General Assembly of Louisiana at the Extra Session of 1870, entitled "An Act, "To limit and restrict the power of Courts to issue orders or writs "of Mandamus and *fieri facias* against the City of New Orleans "and the officers thereof, and to declare the effect and prescribe "the mode of satisfying judgments for money against the City of "New Orleans") impair the obligation of any contract existing at the time of its enactment between the plaintiff in error and the City of New Orleans. If not, then this Court cannot review the judgment of the State Supreme Court, herein sought to be reversed.

The Acts Nos. 108 and 109 of the Legislature of Louisiana, approved March 15th, 1854, under which the Bonds of relator were issued, contain no provision whatever for the levy of any special tax to pay the principal thereof, and gave no specific remedy to enforce their payment, by suit or otherwise. A special tax, for the payment of the interest only, but not for the principal, is authorized to be levied by these Acts. In the case of the United States vs. County of Macon (99 U. S. Reports, pp. 590 and 591), it was said: "So, too, if the municipality has no "power, either by express grant or by implication, to raise

"money by taxation to pay the bond, the holder cannot require "the municipal authorities to levy a tax for that purpose. * * "We have no means by *mandamus* to compel a municipal corpora- "tion to levy a tax which the law does not authorize."

(1) That a State Legislature can enlarge, limit or alter the modes of proceeding for enforcing a contract, provided the remedy be not withheld nor embarrassed with restrictions which seriously impair the value of the right; (2) that Act No. 5, passed by the General Assembly of Louisiana in the Extra Session of 1870, as interpreted and enforced by the State Supreme Court, provides a complete, adequate and efficacious remedy upon all judgments rendered against the City of New Orleans; (3) that this Act, and the provisions therein, are binding both upon the State and Federal Courts; and (4) that plaintiff in error has been deprived of no right guaranteed to him by the Constitution of the United States, are the propositions for which we contend and which we shall endeavor to demonstrate.

That a State may change the remedy for enforcing a contract without impairing the obligation, was forcibly illustrated by this Court in the case of Tennessee vs. Sneed, 96 U. S. p. 69.

See, also, Sturges vs. Crowninshield, 4 Wheat. 122.
Mason vs. Haile, 12 Wheat. 370.
Bronson vs. Kinsie, 1 How. 311.
Von Hoffman vs. City of Quincy, 4 Wall. 535.
Bruce vs. Schuyler et als., 9 Ill. 221.
Huntzinger vs. Brock, 3 Grant's cases (Pa.) 243.
Evans vs. Montgomery, 4 Watts. & S. (Pa.) 218.
Read vs. Frankfort Bank, 23 Me. 318.
Scott vs. Duke, 3 (La.) An. 253.
Commercial Bank vs. Markham, 3 (La.) An. 698.
Featherston vs. Compton, 8 (La.) An. 285.

To ascertain if the remedy prescribed by the Act No. 5, Extra Session of Louisiana General Assembly of 1870, is adequate and efficacious, we must examine it by the light of the decisions rendered by the State Supreme Court upon its provisions. The settled construction of a statute by the courts of a state may be said to form a part of the statute itself, and should be followed by this Court, unless such statute so construed violate some prohibition contained in the Federal Constitution. United States vs. Longworth & Wright, 1 McLean, 35.

The Supreme Court of Louisiana has, in a number of decisions, upheld the constitutionality and validity of this Statute, and rigorously enforced its provisions in favor of the judgment creditors of the City of New Orleans. In the case of State ex rel. Carondelet Canal and Navigating Company vs. Mayor and Administrators of New Orleans, 30 (La.) An. 129, it was held that: "It is the duty of the Mayor and Administrators of the "City of New Orleans to set apart, and provide specifically, in "the forthcoming yearly budget, out of the funds to arise from "the *general* tax, therein levied, means for paying all judgments "against the City then registered in the office of the Administrator of Public Accounts and unsatisfied in the order of their "registry. And this duty, the Mayor and Administrators may "be compelled by mandamus to perform.

"It is not their duty to levy a separate tax to pay such judgments; nor is it made obligatory on them to pay such judgments out of the funds in their hands set apart for contingent "expenses; although they may, in their discretion, discharge "the judgments out of that fund.

"If the means arising from the general tax levied in one "annual budget are not sufficient to pay all of the registered judgments, provision must be made in each subsequent budget, "until all of such judgments are successively extinguished."

Again, in the case of State ex rel. Carondelet Canal and Navigating Co. vs. Pilsbury, Mayor, 30 A. 705, the Supreme Court of Louisiana held that: "A judgment creditor of the City of "New Orleans, who has registered his judgment in accordance "with law, is entitled to a mandamus to compel the auditing and "disbursing officers of the City, respectively, to warrant for, and "pay the same, or so much thereof as there may be a special "fund in the City Treasury to pay such judgment; and no misapplication of such fund, by any or all of the officers of the "corporation, can hinder or defeat the rights of the creditors "entitled to be paid out of such fund." State ex rel. De Monasterio vs. Shaw, Administrator, 23 A. 790; State ex rel. Strauss vs. Brown, Administrator of Public Accounts, 30 A. 78; State ex rel. J. D. Houston vs. the City of New Orleans, 30 A. 82. City of New Orleans vs. Ruleff, 23 A. 708.

The Judges of the State Supreme Court have also clearly explained the object of the statute in controversy, and shown

conclusively that, as interpreted by them, it is not subject to any constitutional objection. State ex rel. Southern Bank vs. Pilsbury, Mayor, et al., 31 (La.) An. p. 20 et seq.

A similar statute, if we mistake not, exists in the State of Wisconsin, for in the case of Crane vs. the City of Fond du Lac, 16 Wisconsin Reports, 196, it was said by the Court, Payne, J.: "There being no special provision in the charter of the City of Fond du Lac, prescribing in what manner judgments against the City should be enforced, we think it governed by the general provisions of law in regard to towns. Those provisions are that no execution shall issue, but that the amount of the judgment shall be made part of the next tax-roll and collected as other taxes."

Had relator recovered judgement on his bonds in the United States Circuit Court instead of in the State Court, he would have been compelled to pursue the same mode of execution pointed out by the statute in question, the validity of which he now disputes. For by Section 5 of the Act of Congress of June 1st, 1872, entitled "An Act To further the administration of justice," since incorported into the Revised Statutes of the United States as section 916 thereof, it is provided that "The party recovering a judgment in any common law cause in any Circuit or District court shall be entitled to similar remedies upon the same, by execution or otherwise, to reach the property of the judgment debtor, as are *now* provided in like causes by the laws of the State in which such court is held," etc. Thus it appears that the same mode of proceeding prescribed by the statute complained of, for the execution of judgments rendered by the State courts against the City of New Orleans, was adopted by the Process Act of Congress above quoted for the government of the Federal Courts. In a number of cases it has been decided that a judgment creditor's remedy in the courts of the United States is governed by the laws of the State where suit is brought, and that the modes of proceeding were the same whether the litigation was in the State court or in the Circuit Court of the United States. Riggs vs. Johnson County, 6 Wallace 189.

Matherson vs. Crawford, 4 McLean 540.

United States vs. Council of Keokuk, 6 Wallace 517.

It appearing, therefore, that plaintiff in error is entitled to the

same process in execution in the State Court as in the Federal Court on the judgment obtained by him against the City of New Orleans, that the remedy provided by the statute in question is adequate and efficacious and not subject to any constitutional objection; that such would have been the decision of this Court in the case of United States vs. New Orleans (98 U. S. 381) had the act 5 of 1870 been then pleaded and relied upon, we ask that the judgment be affirmed, with costs.

Respectfully submitted,

E. HOWARD McCALEB,

City Attorney for the City of New Orleans, Defendant in Error.